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BY

SIR LYNDEN MACASSEY, K.B.E., K.C., LL.D.

AND

C. E. A. BEDWELL, Esq.

Let observation, with extensive view,
Survey mankind from China to Peru.
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EXPENDITURE ACCOUNT 1921

Receipts.

	£	s.	d.
To Balance in hand at January 1, 1921	281	13	2
,, Amount of arrears collected in 1921:			
(*a*) Governments	5	5	0
(*b*) Other than Governments	66	11	2
,, Grants received from:	£	s.	d.	
Law Society	21	0	0	
Lincoln's Inn	21	0	0	
Middle Temple	21	0	0	
Gray's Inn	10	10	0	
				73	10	0
,, Subscriptions:			
(*a*) Governments	249	7	0
(*b*) Other than Governments	445	15	9
,, Rent of Chambers sub-let (5 quarters)	50	0	0
,, Sales of Journals, including back numbers, reprints, and portraits	61	14	7
,, Advertisements	16	2	0
,, Miscellaneous receipts	11	7	8
,, Interest on War Loan	7	0	0
,, Subscriptions in advance	22	1	0
	£1,290	7	4

Expenditure.

	£	s.	d.
By Hazell, Watson & Viney, Ld., Vol. iii, Pt. 1	200	3	1
,, Hazell, Watson & Viney, Ld., Vol. iii, Pt. 2	154	12	3
,, Hazell, Watson & Viney, Ld., Vol. iii, Pt. 3	178	17	11
,, Art Reproduction Co.:			
Portrait, Emeritus President Eliot	9	6	0
Portrait, Lord Shaw	11	8	0
,, Clerk at rate of £120 p.a.	108	0	0
,, Rent of Chambers (3 quarters)	51	3	0
,, Cleaning do. and office maintenance (gas, electric light, etc.)	12	1	7
,, Postage and petty cash	40	15	10
,, Mimeographing and clerical honorarium	29	19	2
,, Printing and stationery	17	5	5½
,, Purchase of back numbers	1	1	0
,, Miscellaneous expenditure	0	2	3
,, Telephone	11	18	10½
,, Balance in hand, December 31, 1921	463	12	11
	£1,290	7	4

REVIEW OF LEGISLATION, 1920.

INTRODUCTION.

[*Contributed by* Sir Lynden Macassey, K.C.]

For many years this annual Introduction has been written by Sir Courtenay Ilbert, and all readers of this Journal will hope it may be continued to be written by him for many years to come. He has never allowed anything to stand between him and its preparation. On this occasion through indisposition he has been unable to undertake it, and I am venturing to write it, keenly conscious of my deficiencies as compared with his wide experience and unequalled knowledge of comparative law.

The difficulty one encounters at the very outset of the task is that of deciding to what particular matters which figure in the various volumes of legislation under review a reference should be made. The contributors, one and all of them, bring such skill and judgment to bear upon their compilations of the enactments in their particular countries, that nothing, short of a considered study of all that they have written, would suffice to give a balanced view of the character and effect of the legislation throughout that part of the world which is covered by this Journal. In reading such contributions one person is struck by certain features—another finds his interest excited by different matters. A general review must, therefore, be something written entirely from a subjective point of view ; that is the standpoint, for want of a better, from which I have proceeded.

The general impression created upon my mind by a perusal of the summaries of legislation was the tendency in all countries in 1920 to continue war-time emergency measures for a period which they thought would suffice to tide over the transition from war to peace, coupled with the desire to pass such measures for social improvement and economic reconstruction as would provide a sure foundation on which to rebuild a new national edifice adjusted to accord with the altered circumstances resulting from the war. The trend of legislation makes it quite clear that no country expected to encounter the catastrophic depression in trade, both national and international, which set in during the late summer of 1920. It will undoubtedly be a matter for comment in the next Introduction, how much of "reconstruction" legislation has been entirely frustrated by the adverse economic forces which intervened to thwart the recuperation of all countries from the effects of the recent hostilities.

Mr. Cecil T. Carr describes most appropriately the chief characteristics of the Acts passed in the United Kingdom in 1920 in these words : "The motives for legislation in 1920 were various. The storm was over. The ship was still afloat, but not yet in harbour. Her hull was protected and her deck-space encumbered by strange structures which the carpenters though not proud of their handiwork, were yet loth to jettison. These hasty improvisations required inspection to see whether they could be safely removed or whether they must be renewed or replaced by something more lasting."

A notable enactment was the Emergency Powers Act, 1920, which enables a Royal Proclamation to be issued declaring that "a state of emergency" exists whenever a strike takes place or is threatened on so extensive a scale as to be calculated to deprive the community of the essentials of life. The Act enables the Government, in such a contingency, to do all that is necessary to secure and regulate the supply and distribution of food, water, fuel, light and other necessities, and the maintenance of the public services. There was a provision inserted in the Act, prohibiting any regulation made under it from affecting the right of "peaceful persuasion" which was secured to the Trade Unions under the Trades Disputes Act 1906. Similar emergency powers are vested in the Governments of other countries, but, so far as I am aware, in no country but Great Britain is any legal right of "peaceful persuasion" reserved to the Trade Unions for the purpose of continuing the strike at the very time the Government is concerned in combating the strike in the interests of the community. Mr. Carr disposes admirably of the case for the Act in these words: "It is hard to see by what better legislative mechanism such situations can be met if we are to preserve a form of Government which, in Lincoln's words, is strong enough to maintain its existence in great emergencies, yet not too strong for the liberties of its people."

The most important Acts passed to further industrial reconstruction were the Mining Industry Act and the Unemployment Insurance Act. The former Act established a Mines Department, and Part II. proposed to set up a system of National and Area Boards and District and Pit Committees, the intention being to give the mine-workers a statutory voice in the fixing of wages and conditions of employment. Part II. ultimately expired because of the refusal of the mine-owners to work it, on the ground that it was unnecessary, inasmuch as the Agreement of July, 1920, provided, they said, somewhat similar machinery. The Unemployment Insurance Act extended to practically all manual workers (except railway men) the State scheme of unemployment insurance. Certain welcome modifications in the Income Tax Law were effected by the Finance Act which gave effect to the report of the Royal Commission on the Income Tax; and the Agriculture Act embodied many recommendations of Lord Selborne's Reconstruction Committee.

Mr. Llewellyn Kneale draws useful attention to some new amendments in the constitution of the Isle of Man, effected by the Isle of Man Constitution Amendment Act, 1919, seemingly of democratic character, and to the abolition of the "Great Enquest," a jury whose duty it was to watch for and report upon interference with public rights of way, but which, in spite of its resounding name and weighty responsibilities, had seldom been convened, a proof that the fertile subject of litigation—rights of way—is not apparently productive of as much controversy in the Isle of Man as in other places.

In Jersey Mr. E. T. Nicolle reports that the States of Jersey have now brought secondary education under their control, a somewhat delayed reform—as to the expediency of which there can scarcely be any question.

Passing thence to North America, one learns from Mr. John D. Hunt of the strenuous efforts of Alberta to form irrigation districts and works for the purpose of combating the drought which has worked such havoc in recent years throughout portions of the Province. Another provision eloquent of local conditions is an enactment to the effect that any contract for the sale of an automobile carries an implied warranty that "repairs for

the same will be available for a period of five years from the date of sale at some place in the cities of Calgary and Edmonton."

" The question of the adoption of children has occupied the attention of British Columbia," says Mr. H. G. Garrett, in reporting on its legislation, where a Statute was passed legalising and regulating the matter. A provision, due no doubt to the spaciousness of, and dearth of travelling facilities in, that Province, occurs in the Provincial Elections Act : " When a voter is absent from his proper polling division or his electoral district on the day of the election, he may on making the prescribed affidavit cast his ballot at the point he happens to be." Absentee votes are then placed in separate envelopes and in due course despatched to the Returning Officer of the district where the voter is registered. That Act also provides that every political party (not merely the candidates) concerned in the election must return a statement of the expenses which it has incurred. The rule of the road in British Columbia used to be the same as in England—" keep to the left when meeting, to the right when overtaking "—an Act has now reversed this so as to bring the Province into line with the rest of North America. This Province has also attacked the controversial question of mothers' pensions, and has provided them for widows, married women whose husbands are in prison or in a lunatic asylum, women whose husbands are unable to support them owing to illness or accident, deserted wives and in some other special cases, provided the applicants are indigent, have children under 16, are qualified as British subjects, and have been resident for at least 18 months in the Province. In British Columbia, as indeed in all the Provinces of Canada, Acts have been passed materially tightening up provisions regulating the sale of intoxicating liquors, which make long strides towards total prohibition.

In Manitoba we read from Mr. Pitblado of the passing of an Act for the registration of all professional engineers. That necessary provision for the protection of the public is very general in the Dominions and in a number of foreign countries ; why it has never been adopted in Great Britain is hard to understand. Several cases came under my personal notice during the war of men who styled themselves " civil engineers," whose only experience was the conduct of a hardware shop, and the repair of lawn-mowers, and who were appointed as " civil engineers " to positions in Government Departments. Manitoba also passed an Act providing for the legitimation as from birth of children born out of lawful wedlock by the subsequent marriage of their parents. Although the stretching tracts of the " wild west " suggest a material necessity for some such provision, the almost general adoption of such legitimation laws in North America suggests a case for the consideration of the principle in other countries.

The Attorney-General of New Brunswick mentions two laws which seem to be of more than ordinary importance : One in 1919 providing for the revision of the tolls on the provincial railways. In Great Britain we have, by passing the Railways Act 1921, at last followed the example of the Dominion of Canada and of the United States of America in sweeping away all our old railway Acts which specified the maximum rates not exceeding which the railway companies might make charges and substituting for them the American system of " reasonable rates " which leaves it open to any trader to contest at any time the rate which he is charged, and in case of controversy submit the amount and the conditions of the rate to the decision of a Rates Tribunal. Another Act in New Brunswick deals exhaustively with the housing problem.

Amongst the Acts passed by the Province of Ontario which are noted by Mr. Falconbridge, I observe that retirement from the provincial Civil Service is not compulsory until the age of 70, although optional at 65, a tribute to the virility of that Province. In the case of the death of a civil servant before or after superannuation, one-half of the retiring allowance is provided to be paid to the widow and to children under 18 years of age. It is interesting to notice that it has at last become necessary to limit the abstraction of water by electric power companies authorized to construct works on the Ontario side of Niagara Falls, in view of the fact that the amount of water to be used on each side of the river is limited by the International Waterways Treaty. In the matter of social legislation, Ontario has gone ahead by providing for the payment of allowances to widows or the wives of inmates of hospitals for the insane, or of permanently disabled men, provided the recipient is a mother of at least two children who live with her, is a British subject and resident in Ontario. Ontario has been, since the passing of the Ontario Temperance Act, 1916, a province in which the sale of intoxicating liquor for beverage purposes (other than native wines) has been forbidden. Now, an Act has been passed prohibiting "short circuiting," that is to say the sending of orders from Ontario to (say) Montreal which are thence returned to breweries and distilleries in Ontario to be fulfilled in Ontario. Mr. Falconbridge laconically observes that the "oppressive system under which the inhabitants of Ontario live was completed by a Dominion proclamation bringing into force the prohibition of importation."

Among the Acts passed in Prince Edward Island detailed by Mr. Bentley, we again observe one for the legitimation of children born out of lawful wedlock.

In Quebec, amongst a number of Acts to which Mr. Justice Fabre Surveyer refers, the most important seems the Companies Act, which is obviously designed to do away with abuses connected with the incorporation and management of companies and corporations, a reform which will much increase the confidence of investors in that Province.

Saskatchewan produced, says Mr. Shannon, the smallest bulk of current legislation for many years. The Fatal Accidents Act amends the previous legislation on that subject by embodying the provisions of the English Fatal Accidents Act 1864, entitling the person beneficially interested to bring an action.

The principal Acts which were passed by the Legislature of Newfoundland, as one observes from the report of the Minister of Justice, are those dealing with one of the chief national industries. One Act prohibits the exportation of salt codfish except under licence; another provides for "the standardization of codfish," the object of the latter Act being to improve the method of curing. A commission has been appointed with very full powers over the whole codfish industry, entitled to make regulations for the breach of which penalties are provided. Another Act makes provision respecting the sufficiency, quality and quantity of food supplied to crews on fishing vessels, and the cleanliness of their sleeping quarters. Under the Acts prohibiting the destruction of beavers, these industrious little animals have multiplied so rapidly as to cause, through their river operations, serious flooding, and an Act has been passed conferring on the Governor in Council powers of enabling them to be hunted and otherwise killed in specified districts. Profiteering has led to special restrictive legislation in Newfoundland as in a number of Canadian Provinces.

In Bermuda Sir Reginald Gray reports that the principal Act was one dealing with public health.

When we pass to Australasia, Sir Robert Garran states that in the Commonwealth of Australia the bulk of the legislation of 1920 dealt with matters arising out of the war and the transition from war to peace. In consonance with its motto, "Advance Australia," the Commonwealth has given a bold lead against sedition. Included in the list of prohibited immigrants under the Immigration Act 1920, are persons "who advocate the overthrow by force or violence of the Government of any civilized country or who advocate other specified doctrines of a similar character or belong to an organization which advocates such doctrines." These gentry are still permitted to seek an asylum in the United Kingdom. Australia has always led the way in industrial arbitration, and the Industrial Peace Act 1920, establishes a Commonwealth Council of Industrial Representatives, consisting of employers and employed in equal numbers with a Chairman, which is to consider all questions likely to lead to industrial unrest. How exactly the very complicated scheme provided by this Act is going to fit in with the Commonwealth Conciliation and Arbitration Act does not quite appear, but experience will show. It is quite the most ambitious legislative proposal to deal with the matter that I am acquainted with, and is much on the lines of the "Parliament of Industry" which it was suggested by the Industrial Conference held in 1919 should be established in Great Britain. The Parliamentary Allowance Act increased the allowances payable to members of the Commonwealth Parliament from £600 to £1,000 per annum.

In Queensland Messrs. Littleton E. Groom and J. F. Gamble refer, amongst other Acts, to the Wheat Pool Act constituting a State Wheat Board to deal with the marketing of the wheat harvest of the season 1920-1, the object presumably being to make provision on a comprehensive scale for the collection and marketing of the wheat grown by isolated producers.

A similar provision, Mr. A. J. Hannan says, was made by South Australia. By far the most important of the Acts of that Legislature is the Industrial Code (No. 1453). South Australia has always been to the fore in industrial arbitration and conciliation, and the decisions of its State Industrial Court, presided over by Mr. Jethro Brown, are known the world over. This Industrial Code Act, which runs to 135 pages, seems to cover, in form at any rate, all possible contingencies. The doubtful question remains how far unruly industrial psychology can be constrained within the four corners of an Act of Parliament. So far compulsory arbitration has nowhere been a complete success. South Australia has also turned its attention to bookmakers and has attempted to suppress them entirely. An Act has been passed enabling the police to remove from any race-course any persons suspected of bookmaking. To offset this extinction of the bookmaker and to act as a solace to the small punter thus deprived of his opportunity to "back his fancy," racing clubs are bound to provide totalizators and to permit amounts down to half-a-crown to be wagered. The first Town Planning Act in Australia was passed in South Australia in 1920 after a number of earlier unsuccessful attempts.

Tasmania, Mr. H. S. Baker tells us, shouldered in 1919-20 a considerable burden of social legislation. Amongst other Acts I observe one increasing the allowances of members of both Houses of the Legislature from £200 to £300 per annum; another, providing for the protection of birds and wild animals, and imposing a severe penalty on anyone importing any fox, wolf,

wild dog or dingo ; another establishing a Government Shipping Department with full powers to carry on shipping services. The first piece of legislation to be passed by an Australian legislature dealing with the feeble-minded is contained in the Tasmania Mental Deficiency Act of 1920. It mainly follows the English Act of 1913, but there has been introduced a number of provisions borrowed from the mental deficiency laws of New York, Illinois and other American States, apparently of a most beneficial character.

Judge Zichy-Woinarski and Mr. Harrison Moore report at length on the legislation in Victoria. A State Electricity Commission was established to further the development of electricity. To lessen the practice of "whispering to jurymen" the law has been altered so that in any criminal inquest a copy of the panel from which the jury are to be chosen may be inspected and a copy obtained at the cost of 2*s*. on the day before the precept is returnable and after that day until the panel ceases to be operative—the existing law permitted such inspection and the obtaining of the copy three days before the precept was returnable. This, it was found in practice, gave a great opportunity to the evil-minded to defeat the ends of justice.

Mr. F. L. Stow, reporting on Western Australia, alludes to "a unique incident in the history of British communities," namely, a strike in the Civil Service, which occurred in July, 1920, when the functions of Government were suspended and documents could neither be registered nor stamped. As a result, an Act had to be passed extending the time for registration of documents. Western Australia is making a pioneer attempt to amalgamate the Commonwealth and its own State services which deal with income tax, so as to avoid two separate returns and two different staffs of officials.

In Papua Mr. Justice Herbert notices a number of amendments of the Criminal Law. Whipping can now no longer be inflicted without the consent of the Lieutenant-Governor.

The legislation of New Zealand, as epitomized by Mr. J. Christie, seems to have been very full. One Act remedied the curious effect on the Customs Act of 1913 of the depression of international exchanges. That Act provided that where an invoice showed the value of goods in any foreign currency, the equivalent value in New Zealand currency should be ascertained according to "a fair rate of exchange." This was held to be the "mintage rate" and not the commercial rate; the result was that importers from countries like America, whose currencies were at a premium on the dollar-sterling basis, benefited very largely, and others from countries like France with depreciated currency were seriously prejudiced. New Zealand also has passed an Act making it unlawful for anyone to carry on the business of bookmaking. The Government has established an Office of Parliament to be called the Law Drafting Office with two departments, the Bill-Drafting Department, and the Bill-Compilation Department, whose respective duties are sufficiently indicated by their names. The Marriage Amendment Act has made it an offence punishable on summary conviction to allege expressly or by implication that any persons lawfully married are not truly and sufficiently married or that the issue of that marriage is illegitimate or born out of true wedlock. This aims at a mischief prevalent in New Zealand where a certain religious sect has been teaching that marriages celebrated in accordance with law but not in accordance with the rules of their particular branch of the Christian Church are invalid. We recently heard of such teaching as that in a

part of the then United Kingdom. A new Divorce Act has considerably extended the grounds of divorce; detention in an institution for insane persons was previously recognized only as a ground of divorce if such detention was in an institute in New Zealand; the Amending Act makes detention in such an institution in any part of the British Dominions a ground for divorce. The same Act makes the failure to comply with a decree for restitution of conjugal rights a ground for divorce—that had previously been the law but was repealed in 1907—also separation whether pursuant to a decree or by agreement for not less than three years.

From the report of Judge A. K. Young, one observes that even the Gilbert and Ellice Islands Colony is not yet emancipated from the complications of the war.

The legislation which was passed in the Union of South Africa, so far as of general interest, Mr. E. L. Matthews reports, was mainly of an economic character with the exception of the Native Affairs Act 1920. That Act created an elaborate machinery for the introduction of self and local government in native communities as a foundation on which later to build representative native institutions. South Africa has also dealt with a number of economic problems in much the same way as has been done in Great Britain. An Act was passed regulating the increase of rents, and containing an unusual provision that any tenant may complain to the Rent Board that he is being charged an unreasonable rent, in which case the Board has power to investigate the circumstances and fix a reasonable rent. If experience of the Land Courts in Scotland and Ireland be a guide, one would be inclined to infer that the time of the Rent Board will be fully occupied. The Profiteering Act contained some most interesting provisions fixing the considerations which were to determine whether or not an unreasonable profit was being made. Mr. Matthews' account of the currency difficulties which led to the passing of the Currency and Banking Act is exceedingly instructive to students of currency. The Government wisely took the opportunity when dealing with currency of placing the South African banking system on a sounder footing by the establishment of a Central banking institution known as the South African Reserve Bank. Marriage between a widower and his deceased wife's sister, which has been lawful in the Cape since 1892 and in the Orange Free State since 1903, has now been authorized in the Provinces of Natal and Transvaal by an Act of 1920.

The ubiquitous cinema has invaded the Transvaal, and one notices from Mr. Hartog's report that the Administrator is empowered to prohibit the importation of any film or picture or the production of any play which in his opinion is contrary to good morals or "public policy," as wide powers as we remember, but probably not more so than circumstances demand.

The record of legislation for British India is very voluminous. Mr. Muddiman informs us that the Indian Legislative Council passed in 1920 the greatest number of Acts that it has ever enacted in any one year of its long career, partly to meet arrears of legislation postponed by the war, and partly to supplement the Government of India Act 1920 so as to complete the scheme of constitutional reform comprised in the Government of India Act 1919. That Council, which owed its origin to the Government of India Act 1861, now passes out of existence with a record of honourable public service that reflects undying fame on its long list of distinguished members. Well may it say, as it looks back over Indian legislation: "*Exegi monumentum aere perennius.*" Amongst the Acts of the Governor-General in

Council were enactments to deal with fraudulent debtors who appear to be specially troublesome in India. Another Act simplified the legal process by which persons interested can obtain information in regard to the administration of religious and charitable trusts. Complaints of the inefficiency of the existing law to prevent the misappropriation of funds of such endowments appear to have been made insistently since 1897. A provision in the Income Tax Act has been amended under which an assessee of an income just in excess of one of the stages in Schedule I, found himself after payment of his tax worse off than if his total income had been below that stage. India is not the only place where that anomaly has existed. The important recommendations of the Indian Exchange and Currency Committee were incorporated in an Act which declared that the legal tender of a sovereign should be at the rate of *Rs.*10 instead of *Rs.*15. This is part of the policy of the Government of India for the fixation of exchange on a *Rs.*10 per pound basis. A very stringent Corrupt Practices Act was put into operation in anticipation of the new legislative bodies constituted under the Government of India Act 1919. An important Act was the Imperial Bank of India Act, which gave legal effect to the fusion into a single bank of the Presidency Banks, created under the Act of 1876, so as to constitute a strong central bank in close relation with the Government and thereby promote the growth of banking facilities in India.

In Madras a number of Acts modifying the constitution of municipalities and establishing local boards and village committees (*Panchayats*) were passed to give effect to the recommendations of the Royal Commission on Decentralization. There have been similar Acts in Bombay, the United Provinces and the Central Provinces. Disputes appear to have been prevalent in Bengal with regard to the possession of land newly formed by alluvion, and an Act was passed to provide for their settlement. Burma has passed an Act providing for the registration of business names on the lines of the English Registration of Business Names Act 1916.

In Hong-Kong, Mr. Alabaster records the passage of many Acts, bringing the law of the Colony into line with the post-war legislation of the United Kingdom. Several insurance companies and a bank obtained legislative sanction for the conversion of their silver capital into gold because of the remarkable rise during 1920 in the value of silver, but as to whether the rise in silver was a cause or an effect of the Eastern trade depression economists do not seem to be in agreement.

The labour question has always been one of difficulty in the Straits Settlements because of the medley of races, and it is not surprising to read in Mr. de Mello's account of legislation that one of the most important Acts was a Labour law, the provisions of which are peculiar to the circumstances of the Colony. By another Act the Colony has followed the example of Hong-Kong and has vested its Education Department with legal control over all schools.

In the Federated Malay States' legislation, also summarized by Mr. de Mello, there is an Act mitigating the terrors of the office of Trustee which, we gather, were not altogether without foundation, by laying down rules for his guidance based on the Trustee Act 1893 of the United Kingdom. Obstruction or overtaxing of water courses as the result of riparian building operations appears to be a matter of such moment in this Colony as to have called for special legislation. One may mention that the common law has been found so ineffective to deal with the same matter

in the United Kingdom that most of the large English municipalities have had to obtain special provisions in private acts of Parliament to regulate it.

Mauritius, Mr. Koenig reports, has passed a large number of Ordinances, one increasing the export duty on sugar for the purpose of forming a fund to be applied to the destruction of the troublesome little pest known as *Phytalus Smithi*.

The legislation of Ceylon, Mr. Maartensz says, consisted mainly of unimportant amendments, one of which provides for the creation of a Local Government Board to supervise local government in the Island.

The State of North Borneo, the substance of whose Ordinances Mr. Macaskie communicates, has prohibited any child under 16 being employed in any service involving management of or attendance on or proximity to machinery in motion.

Passing thence to the Gold Coast, whose Ordinances Mr. Wilkinson epitomizes, intending visitors will notice that before a person can in future obtain a licence for driving a motor in the Colony, he must pass a satisfactory driving test. To keep the money of the natives in their own pockets, if they possess them, and prevent its transfer to those of less worthy people, an Ordinance has been passed preventing the circulation of " charlatanic advertisements."

In Nigeria the enterprising native blacksmith, when he wanted iron for his forge, developed an inconvenient habit of taking it from the railway line; this source of supply is now closed to him under the stern provisions of an Ordinance, and he will have in future to go further afield.

The ubiquitous motor has established such a hold upon Sierra Leone as to call, so we learn from the report of the Attorney-General, Mr. McDonnell, for an Ordinance to restrict the straying of animals. He says that " until the advent of the internal combustion engine, wheeled traffic, other than an occasional rickshaw, was unknown in this tsetse-ridden Colony." The owners of animals who enjoy no private grazing facilities appear from time out of mind to have made the highways their pastures. It is now the duty of the Government to hold the scales even between the needs of the motor-car and the no less pressing claims of pastureless animals. Another Ordinance has absolutely prohibited the importation of trade spirits and restricted severely the import of any other spirits ; while another Ordinance has put a complete stop to the cultivation of hemp for purposes of consumption as opium, which seems to some extent to have been in vogue in parts of the Colony.

In Zanzibar Mr. J. E. R. Stephens notices a number of decrees. It is interesting to see that one provides for the supervision and control of stage plays and cinemas and exhibitions, while another secures a due supply by placing exposed cinema films for exhibition purposes in the list of non-dutiable goods.

Mr. Luckhoo draws attention to the Ordinances of British Guiana. One enables any woman to marry her deceased's husband's brother ; another constitutes a Deeds Registry ; another prohibits, except under licence, the purchase of produce like coffee and rubber at any place other than a public market.

In the Bahamas the Hon. Harcourt Malcolm records the passage of a considerable number of Acts. One reduced by 50 per cent. the import duties on all dutiable imports except wines, spirits and tobacco ; another ratifies the Trade Agreement with Canada whereby a statutory reciprocal

preference of 25 per cent. of customs duties is conferred on the parties to the agreement.

Jamaica passed many laws noted by Mr. Wells Durrant, one affording much-needed relief to income tax payers.

In St. Vincent we hear from Mr. L. C. Levy that apparently the export market for sugar had a greater attraction for manufacturers than the home market, and accordingly an Ordinance had to be passed requiring sugar-exporting manufacturers to manufacture sugar for home consumption in such proportion as might be fixed by the Governor in Council, and relieving them from any liability for breach of contract resulting from their compliance with the Ordinance.

A similar difficulty appears to have arisen in St. Lucia, and is noted by Mr. J. E. M. Salmon.

Trinidad and Tobago, as the Attorney-General mentions, have now brought their Bills of Exchange Ordinances into line with the law of the United Kingdom. Another Ordinance gives official recognition in the Colony to the Boy Scout movement.

Captain Maxwell Anderson, in reporting on Gibraltar, states that the principles of law in the United Kingdom regarding motor cars have now been applied, and also the English restrictions on the increase of rent.

Amongst the laws in Cyprus, Mr. Justice Stuart refers to a number designed to assist the agricultural classes; one enacts that interest on a loan to a farmer shall not exceed 12 per cent.; another provides for the accurate keeping of day books by traders of all transactions between them and farmers, and for a full statement of the consideration for which loans are made to farmers. Apparently there is a dangerous custom in Cyprus of carrying daggers and knives which are apt to be used in the heat of controversy to point an argument; this method of disputation forms the subject of a special law.

The legislation of Palestine, as Mr. Norman Bentwich reports, is specially interesting. A civil government was established in Palestine in July 1920. The law-making authority is the High Commissioner, acting through a consultative body. One of his first reforms was to create an Advisory Council composed of notables of the country which he consults about all proposed Ordinances. This is the first step towards the creation of the representative institutions which it is intended to develop under the Mandate. A considerable number of Ordinances have been passed amending the Ottoman law dealing with land transfer and registration, mortgages, copyright, co-operative societies, credit banks, &c. One Ordinance that will command the unqualified approval of all visitors to the Holy Land is that which prohibits the exhibition of advertisements except on special Municipal hoardings within the municipal area or in places outside specified by the District Governor or on a trader's own premises. The object is to protect the historic scenes and sacred places of Palestine from desecration by advertisement. The necessity of this is known to every traveller. Another Ordinance established a Department of Antiquities for the protection of the historical monuments and antiquities of Palestine, an antiquity being defined to be any object or construction made by human agency earlier than 1700. Another Ordinance has been passed to encourage the establishment of co-operative societies on the basis of the Indian law, but with rather wider scope.

Professor Wang King Ky contributes an account of China. One regulation forms a special district within the area of the Chinese Eastern Railway to be known as the Special District of the Eastern Provinces, and establishes in it a High Court, a District Court and Branch District Courts for the administration of justice. Special provisions are made to protect the interests of foreigners in respect of their appearing as a party before such Courts. Professor Wang King Ky quotes the Presidential Mandate of September 23rd, 1920, withdrawing Chinese recognition from the Russian Minister. One or two passages merit quotation: "Russia," it says, "has been divided into a number of hostile camps which continue to wage an internecine warfare on one another without organizing a Central Government which represents the will of the Russian people"; "For the time being it is impossible for this country to resume normal diplomatic relations with her"; "The Russian Minister and Consular Officials have long since lost the competency to represent their country"; "Our friendly relations with the Russian people remain the same, in spite of the fact that we shall cease to treat the Russian Minister and Consular Officials as such."

In France one observes that the much-debated *taxe de sejour*, previously only optional, has now been made compulsory and applies to "hydromineral and climatic stations and centres of tourism." One further step is recorded in the emancipation of women; they are now entitled to become members of trade unions without the consents of their husbands; formerly their husbands' consents were necessary. Another law enlarges the powers of trade unions, especially to acquire landed property, but in France legal privileges are accompanied by correlative legal obligations and trade unions enjoy no immunity in law. Another enactment imposed a turnover tax of 1 per cent., to which much objection has been taken, on persons who habitually or occasionally purchase in order to resell; from this law certain commodities are exempt, for example, bread, and certain professions, for example, stockbrokers and generally all other professions giving rise to commissions or brokerages fixed by law. On articles of luxury the turnover tax is 10 per cent.

In the Netherlands Mr. Torley Duwel reports, amongst others, a law conferring further powers upon the Government for "fighting revolutionary turbulences."

In conclusion, I would like to draw attention to a publication which is invaluable to students of comparative law—the Notes on International Labour Legislation—which appear in the International Labour Review of April 1922. Many of these laws have been noticed by contributors to this Journal, but in these "Legislative Notes" the whole field of labour legislation is covered in the United States of America, in the Argentine Republic and in all countries in Western and Central Europe. These notes are too voluminous to print in this Journal, but I understand that they can be obtained in separate form from the International Labour Office in Geneva.

BRITISH EMPIRE.

V. BRITISH INDIA.

[*Contributed by the* Hon. A. P. Muddiman, C.S.I., C.I.E.]

1. ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Acts passed—49.

Steamships.—The Indian Steamships (Amendment) Act, 1920 (1 of 1920), fills a lacuna in the Indian Steamships Act, 1884, and imposes a penalty on the master and owner of a ship which comes within the scope of the Act in a case where passengers are carried in excess of the number specified in the certificate of survey.

Army.—The Indian Army (Amendment) Act, 1920 (2 of 1920), enables the moveable property of persons subject to the Act who have been reported " missing " to be dealt with on the lines of s. 116 of the principal Act, after the expiry of one year from the date of the report.

United Provinces Town Improvement.—The United Provinces Town Improvement (Appeals) Act, 1920 (3 of 1920), supplements an Act of the local Legislature on this subject. It was desired to confer a limited appeal from the Tribunal established by the local Act to the High Court, but as this was *ultra vires* of the local Legislature it was conferred by this Act of the Indian Legislature.

A very large number of Acts were passed by the Indian Legislative Council in the year 1920. This was partly due to the arrears of legislation which were an inheritance from the war and partly to the fact that it was necessary to supplement the Government of India Act, 1920, and the rules thereunder by legislation in the Indian Legislature in order to complete the details of the scheme of constitutional reform which parliamentary legislation had established

By a notification under s. 47 (2) of the Government of India Act, 1919, the statutory provisions relating to the new double-chambered Legislature provided by that Act were brought into operation and *ipso facto* the Indian Legislative Council which owed its origin to the Government of India Act of 1861 passed out of existence. During its last year that Legislature passed the greatest number of Acts passed in any single year of its long career.

Census.—The Indian Census Act, 1920 (4 of 1920), provides for the taking of the census in 1921. It is on the same lines as previous Census Acts, but provides for the collection of statistics in regard to industrial and commercial concerns employing 10 or more persons instead of the previous limit of 20 persons. It also penalizes disclosure by census officials of information obtained by a census return save under due authority.

Insolvency.—The Provincial Insolvency Act, 1920 (5 of 1920), consolidates and amends the law relating to insolvency outside the presi-

dency towns and the town of Rangoon. The Bill as introduced was a Bill to amend the Provincial Insolvency Act, 1907, which latter Act was the first attempt to give a regular insolvency procedure to the greater part of India. Experience had shown that the Act of 1907 subjected an undischarged insolvent to little or no practical inconvenience and that its provisions for the punishment of fraudulent debtors were ineffective. The rescission of the Act was a natural corollary to the Usurious Loans Act (10 of 1920), which had sought to protect honest debtors against dishonest creditors. The main amendments in the law contained in the Bill as introduced were:

(1) Provisions compelling the debtor to apply to the Court for his discharge within a prescribed period under penalty of loss of the protection of the insolvency proceedings; absence of these provisions had enabled a debtor to evade the scrutiny of the Court by failing to apply for his discharge;

(2) Provisions requiring the debtor to show that he is in fact unable to pay his debts and that he has not concealed his property. The object of the amendment is to enable the Court to exercise its discretion as to the amount of protection to be afforded to a petitioning debtor;

(3) Provisions empowering the Court to decide all questions of law and fact arising in insolvency proceedings. There had been a conflict in the decisions of the Indian High Courts on the powers of insolvency courts in this respect;

(4) Provisions giving precision to and extending the law as to criminal proceedings against fraudulent debtors. These provisions are based on ss. 103, 104, and 105 of the Presidency Towns Insolvency Act.

(5) Provisions disqualifying from certain public offices persons adjudicated insolvent.

The Bill was referred to a Select Committee which revised it in details while maintaining the general lines indicated above. The Committee recommended the recommitment of the Bill for incorporation in a consolidating Bill. This was done, and the Act as passed contains the whole of the law on the subject which has been rearranged and amended on numerous small points, especially with reference to procedure in petty insolvencies and to meet difficulties disclosed by case law.

Steam-vessels.—The Indian Steam-vessels (Amendment) Act, 1920 (6 of 1920), relaxes the provisions of the principal Act of 1917 in respect of the nominal horse-power restrictions imposed by that Act. It followed on the adoption of a new formula by the Board of Trade for determining nominal horse-power of marine engines which, though more accurate, had the effect of raising the nominal horse-power of existing vessels.

Tariff.—The Indian Tariff (Amendment) Act, 1920 (7 of 1920), subjects to a general *ad valorem* duty of 20 per cent. (with minimum rates in the case of certain specified articles) firearms and parts of firearms imported into British India, thus simplifying the previous provisions of the law which involved a complicated system of refunds.

Dourine.—The Dourine (Amendment) Act, 1920 (8 of 1920), strengthens the preventive provisions of the Dourine Act (5 of 1910). It was necessitated by the increased prevalence of the disease dourine, more particularly in the horse-breeding districts of Northern India.

Glanders and Farcy. — The Glanders and Farcy (Amendment) Act, 1920 (9 of 1920), includes camels among the animals to whom the principal Act, 12 of 1899, applies. The amendment was due to the ravages

of the disease " surra " to which camels are peculiarly susceptible and of which they are the most dangerous " carriers."

Government Securities.—The Indian Securities Act, 1920 (10 of 1920), consolidates and amends the law relating to Government securities which was previously contained in Act 13 of 1886 and its amendments. The changes made in the law are mainly in the interests of small holders or to remove questions of doubt or difficulty which had arisen in practice.

Insolvency.—The Presidency Towns Insolvency (Amendment) Act, 1920 (11 of 1920), extended to persons adjudged insolvent under the Presidency Towns Insolvency Act, 1909, 3 of 1909, the disabilities in regard to the holding of office imposed in similar circumstances by s. 73 of the Provincial Insolvency Act, 1920.

Breach of Contract.—The Workmen's Breach of Contract (Amendment Act, 1920 (12 of 1920), is an amendment of the Workmen's Breach of Contract Act, 1859. That Act, which originally applied to presidency towns only, penalized fraudulent breaches of contract by artificers and other workmen. Under a power contained in the Act it had been extended to other parts of India outside presidency towns. The amending Act relaxes the severity of the principal Act. It requires a complaint to be brought within three months of the neglect or refusal to perform the contract, limits the application of the principal Act to advances not exceeding Rs. 300, and further confines the operation of the Act where the time for the performance of the contract does not exceed one year. The magistrate is given discretion to dismiss the complaint if he is of opinion that there is no ground for proceeding, and to award compensation in the event of a false or frivolous complaint. Where a breach of contract has been established, the magistrate may refuse to put the Act into operation if he considers that the terms of the contract are substantially unfair to the workman. Further, discretion is given to the magistrate to order either repayment of the advance or performance of the contract. He is no longer, as he was by the previous law, bound by the option of the complainant. Furthermore, an employer is not allowed to use the Act a second time against a particular workman after he has once obtained an order under the Act against that workman.

Import and Export of Goods.—The Import and Export of Goods (Amendment) Act, 1920 (13 of 1920), extends the continuance of the Import and Export of Goods Act, 1916, up to the 31st day of March, 1921.

Religious Endowments.—The Charitable and Religious Trusts Act, 1920 (14 of 1920), has as its object the simplification and cheapening of the legal processes by which persons interested can obtain information regarding the working of both religious and charitable trusts and the exercise of more efficient control over the action of trustees of such trusts. Complaints of the inefficiency of the existing law to prevent the squandering or misappropriation of the funds of such endowments have been made ever since the year 1897, in which an unofficial member promoted a Bill with the object of terminating that unsatisfactory condition of affairs. After long discussion the Government of India endeavoured in the Act now under reference to furnish further facilities to persons desiring to terminate such maladministration. Under the Act any person interested in a trust to which the Act applies may apply by petition to the District Judge for an order directing the trustee to furnish him with information as to the nature and objects of the trust, of the value, condition, management, and application of the subject matter of the trust,

and of the income belonging thereto, and also directing that the accounts of the trust should be examined and audited. If the Court makes the order, which it can only do after hearing the petitioner and the trustee, and any other person who has appeared, or it considers ought to be heard, disobedience is deemed to be a breach of trust affording ground for a suit under the provisions of s. 92 of the Code of Civil Procedure, 1908, and such a suit may be instituted without the previous consent of the Advocate-General. If the existence of the trust is disputed, opportunity is given to stay proceedings to enable a regular suit to be instituted. But if such a suit is not instituted within three months the Court has power to decide the question. Power is given to trustees to apply for directions, but the Court is not bound to give such directions on a question which it considers not proper for a summary disposal. Costs of the proceedings under the Act are in the discretion of the Court, and may be directed to be paid from the property or income of the trust. The Act is only intended to deal with general principles, leaving further and more detailed legislation to the local Legislatures.

Red Cross.—The Indian Red Cross Society Act, 1920 (15 of 1920), provides for the administration of various moneys and gifts received from the public for the benefit of the sick and wounded during the war, and constitutes as a corporate body the Indian Red Cross Society to take over the management of these funds. The Act provides for the appointment of the managing body, contains a wide rule-making power, sets out the purposes to which the funds of the Society may be applied, and provides for the constitution of branch committees and for the affiliation of other societies.

Jagannath College.—The Jagannath College Act, 1920 (16 of 1920), is in the nature of a private Bill promoted at the instance of the trustees of that college in order that the college might be amalgamated with the University of Dacca.

Income-tax. — The Indian Income-tax (Amendment) Act, 1920 (17 of 1920), remedies certain defects and supplies certain omissions which experience has shown to exist in the Indian Income-tax Act, 1918 (7 of 1918). The most important provision is designed to remedy the anomaly which occurred under the existing Act when an assessee of an income just in excess of one of the stages in Schedule I., and therefore liable to pay income-tax at a higher rate than when his income is just below that stage, finds himself after the payment of the tax worse off than he would have been had his total income been below that stage.

Dacca University. — The Dacca University Act, 1920 (18 of 1920), establishes and incorporates a unitary teaching and residential University at Dacca. An important feature of the Act is that the officers and teachers of the University are to be employed not by the Government, but by the University itself. The Act attracted some criticism when passing through the Council on the ground that the communal principle in the representation of the Muhammadan community was not justified in an Act the funds for which would be found by the general tax-payer.

Super-tax.—The Super-tax Act, 1920 (19 of 1920), brings the law relating to super-tax into relation with that at present governing income-tax and repeals the Super-tax Act, 1917. The Act also abolishes the existing super-tax on the undivided profits of companies and firms and replaces it by a super-tax at a flat rate of one anna in the rupee on the whole income of companies and registered firms.

Army.—The Indian Army Suspension of Sentences Act, 1920 (20 of 1920), preserves as a permanent measure the power which was taken as a temporary war measure by the Indian Army Suspension of Sentences Act, 1917, to suspend the execution of sentences of imprisonment or transportation passed by courts martial under the Indian Army Act.

Paper Currency.—The Indian Paper Currency (Temporary Amendment) Act, 1920 (21 of 1920), consolidates and continues the provisions in the previous temporary Paper Currency Amendment Acts relating to the treatment, as part of the Paper Currency Reserve, of gold and silver held in the United States of America or in transit therefrom, as well as of gold held in any part of His Majesty's Dominions for coinage or any temporary purpose, or in transit to and from such Dominion. It further abolishes the previous limitations as to the nature of the securities in which the Currency Reserve might be invested. The measure is a temporary one, only having force up to October 1, 1920.

Lepers.—The Lepers Amendment Act, 1920 (22 of 1920), widens the definition of the principal Act, the Lepers Act, 1898, so as to include in the definition of "Leper" persons suffering from leprosy in any stage of the disease, and not, as was the case under that Act, suffering from the ulcerous stage. Provision is also made for the combination of isolation with medical treatment and for the facilitation of the administration of the Act by allowing the powers thereunder to be exercised by persons empowered by the Local Government and not by police officers alone, as was previously the case.

Military Police.—The Indian Rifles Act, 1920 (23 of 1920), enacts that police officers enrolled under local Acts in military police or rifle battalions shall be subject to the same discipline and penalties, whether serving within or without British India. Intervention by the Indian Legislature was necessary, as such a provision was beyond the powers of a local Legislature.

Civil Procedure.—The Code of Civil Procedure Amendment Act, 1920 (24 of 1920), was designed to reduce the delays in civil proceedings, and enacts that a suit shall be dismissed if the plaintiff fails to apply for a fresh service of a summons within three months from the date of the return of the unserved summons. It also allows the Court to extend that period for good cause shown.

Negotiable Instruments.—The Negotiable Instruments Amendment Act, 1920 (25 of 1920), excuses delay in making presentment for payment when the delay is caused by circumstances beyond the control of the holder and not imputable to default, misconduct, or negligence. The Act is based on s. 46 (1) of the English Bills of Exchange Act, 1882.

Limitation.—The Indian Limitation and Code of Civil Procedure Amendment Act, 1920 (26 of 1920), is designed to reduce the delays in the prosecution of Indian appeals to the Privy Council in respect of those stages of these appeals which take place in India. In the first place, it reduces the period within which a person must apply for leave to appeal to the Privy Council from 6 months to 90 days. It also reduces the period within which security for cost must be furnished from 6 months to 90 days, but allows the Court to extend that period to 150 days. It further provides that the normal method of security must be by the deposit of cash or Government securities. It further reduces the period allowed for substitution of parties from 6 months to 90 days, and this provision applies not only to Privy Council appeals, but to all appeals under the

Code. The Act further allows service by advertisement in the newspapers of notice on the representatives of deceased persons who have not appeared.

Motors.—The Indian Motor Vehicles Amendment Act, 1920 (27 of 1920), empowers Local Governments to prescribe the authority by which, and the conditions and limitations subject to which, licences under the Indian Motor Vehicles Act, 1914, may be suspended or cancelled. There was previously no power in the hands of the executive authorities to suspend or cancel a licence.

Patents and Designs.—The Indian Patents and Designs (Temporary Rules) Amendment Act, 1920 (28 of 1920), extends the power to complete patents proceedings which were started before or during the war for a period of one year longer than was allowed by the principal Act of 1915. This was necessary owing to the fact that under art. 307 of the Treaty of Versailles, which was given statutory force in India by cl. 31 to art. 1 of the India Treaty of Peace Order in Council 1920, a similar privilege was conferred on German nationals.

Patents and Designs.—The Indian Patents and Designs Amendment Act, 1920 (29 of 1920), provides for reciprocal arrangements with the United Kingdom and other parts of His Majesty's Dominions for the provisional protection of inventions and designs within the Empire. It also enables valid protection to be obtained for inventions which, owing to war exigencies, have been protected only in some parts of the Empire, but would otherwise be invalidated by publication in other parts. The reciprocal arrangement depends upon the application of such of the provisions of s. 91 of the Patents and Designs Act, 1907 (7 Edward VII., c. 29) as relates to inventions and designs to British India by Order in Council.

Rouble Notes.—The Rouble Note Act, 1920 (30 of 1920), continues in force for one year subject to a power to the Governor-General to extend for a further year the prohibitions and penalties regarding the possession and import of Rouble Notes which had been rendered necessary to defeat Bolshevik propaganda.

Statute Law Revision. — The Repealing and Amending Act, 1920 31 of 1920), makes certain amendments of a formal character in various Acts and repeals other provisions of Acts which have either been spent or have become unnecessary.

Post Office. — The Post Office Cash Certificates (Amendment) Act, 1920 (32 of 1920), was enacted with the object of popularizing Post Office Cash Certificates by allowing the transfer of a cash certificate to be sanctioned by any person of lower rank than the Postmaster-General instead of by the Postmaster alone. The Act also permits the payment of Post Office Cash Certificates to the value of Rs. 5,000 on the death of the holder without the intervention of the Court.

Criminal Law.—The Identification of Prisoners Act, 1920 (30 of 1920), gives legal sanction to the taking of measurements, finger impressions, footprints, and photographs of persons convicted of, or arrested in connection with, certain offences. If such persons are released or discharged or acquitted by a Court, provision is made for the destruction of all measurements and photographs, both negatives and copies, so taken.

Passports.—The Indian Passports Act, 1920 (34 of 1920), gives legal power to require persons entering British India to be in possession

of passports. A rule-making power is provided conferring on the Governor-General in Council power to make all the necessary administrative and other orders incidental to the general purpose of the Act. Persons contravening any such rules may be arrested, and persons who have entered without passports may be removed from British India by order of the Local Government.

Basel Mission.—The Basel Mission Trading Company Act, 1920 (35 of 1920), validates action which was taken in connection with the property formerly belonging to the Basel Mission Trading Company. The property of this company, which was tainted with German influence, was vested in the Custodian of Enemy Property by an order of the Governor-General issued under s. 7 of the Enemy Trading Act, 1916. After intermediate transfers the property was finally transferred to the Commonwealth Trust Limited, a company which had been formed in England to carry on the work formerly conducted by the Basel Mission Trading Company in India and other countries. Legislation was necessary to place the Commonwealth Trust in an unassailable legal position, and this is effected by the Act. Protection is also given to the Commonwealth Trust Limited in respect of debts due by the Basel Mission Trading Company, where those debts were incurred in countries in which the Commonwealth Trust Limited will not trade. This was secured by requiring the sanction of the Governor-General in Council before a suit or other legal proceedings can be instituted.

Coinage.—The Indian Coinage (Amendment)Act, 1920 (36 of 1920), amends the Indian Coinage Act, 1916, declaring that the legal tender of a sovereign should be at the rate of Rs. 10 instead of at the rate of Rs. 15 as was previously the case. The Act was passed to give effect to the recommendations of the Indian Exchange and Currency Committee. and was part of the policy of the Government of India for the fixation of exchange on a Rs. 10 per pound basis.

Army.— The Indian Army (Amendment) Act, 1920 (37 of 1920), abolishes corporal punishment in His Majesty's Indian forces and introduces field punishment as a substitute on active service. Certain other small amendments are made by the Act.

Devolution of Powers. — The Devolution Act, 1920 (38 of 1920), is a part of the legislation necessary to give effect to the devolution of powers to Local Governments which is one of the cardinal principles laid down in the Government of India Act, 1919. Statutory powers previously vested in the Governor-General in Council have either been transferred or relaxed by the Act, which amends the statutory provisions in that behalf in a large number of other Acts.

Election Law. — The Indian Election Offences and Inquiries Act, 1920 (39 of 1920), was also directly necessitated by the Government of India Act, 1919. The Joint Committee of the Houses of Parliament, when dealing with the Bill which subsequently became the Government of India Act, 1919, advised that a complete and stringent Corrupt Practices Act should be brought into operation before the first election of the new legislative bodies constituted under that Act. The Act makes punishable under the ordinary penal law bribery, undue influence and personation, and certain other malpractices at elections, not only to legislative bodies, but also to public authorities where the law prescribes election as the method of choice. Secondly, it empowers Commissioners appointed under the Indian legislative rules and provincial legislative

rules to exercise judicial powers for investigation in respect of elections to legislative bodies in India. The Act falls into two parts dealing with each of these heads, and the first part makes the necessary amendments in the Indian Penal Code and the Criminal Procedure Code, while the second part of the Act is a substantive enactment, standing by itself, conferring on Commissioners all necessary powers to conduct inquiries into election petitions. The definitions of "bribery" and "undue influence," which are constituted offences under the Act, are interesting, and while perhaps somewhat more widely drawn than the English law on the same subject, are skilful generalizations which are fitted into the framework of the Indian Penal Code and endeavour to reproduce the general character of the language of that Code. With the object of preventing purely malicious prosecutions, the sanction of the Governor-General in Council, the Local Government, or some other officer empowered by the Governor-General in this behalf is a condition precedent for prosecution for offences against the Election Law.

Part 2 of the Act deals with legislation ancillary to the rules framed under the Government of India Act providing for inquiries in the case of disputed elections. An interesting provision is based on s. 59 of the Corrupt and Illegal Practices Prevention Act, 1883, and, while providing that no witness should be excused from answering any question on the ground that it might incriminate him, permits the Commissioners to give him a certificate of indemnity which will save him from a prosecution for an election offence and will prevent his answer being proved in civil proceedings. Disqualifications are also imposed on persons convicted of election offences from holding certain public offices for specified periods.

Aligarh Muslim University.—The Aligarh Muslim University Act, 1920 (40 of 1920), dissolves the Muslim University Association and the Muhammadan Anglo-Oriental College at Aligarh and transfers the property of those societies to a university established by the Act to be called the Aligarh Muslim University. The Act incorporates the University, indicates its functions, creates its governing bodies, and generally secures to the University the assurance of a permanent endowment and the necessary powers of control to Government. The University constituted by the Act is of the teaching and residential type. Among other special features provided for by the Act are the imparting of Muslim religious education to Muslims and the inclusion of Departments of Islamic Studies.

Wireless Telegraphy. — The Indian Wireless Telegraphy (Shipping) Law, 1920 (41 of 1920), enacts legislation for India on the lines of the Merchant Shipping (Wireless Telegraphy) Act, 1919. It applies primarily to sea-going British ships registered in British India, but under the Act ships other than British ships registered in British India become subject to its provisions while they are within any port in British India.

Companies. — The Indian Companies (Amendment) Law, 1920 (42 of 1920), excludes from the purview of s. 91 (B) of the Indian Companies Act, 1913, private companies. S. 91 (B) of the Act of 1913 (inserted by an amending Act of 1914) is a provision peculiar to India which enacts as part of the law a provision which is not uncommonly adopted in articles, namely, prohibiting a director of a company from voting as director on any contract or arrangement in which he is either directly or indirectly concerned or interested. The object of the amendment was due to representations that the application of this provision obstructed the

promotion of subsidiary companies the management of which was to be carried on by a board of directors partially composed of the directors of the parent company. The Government of India, while allowing the exception in favour of private companies provided for by the Act, were not prepared to throw over the provisions of s. 91 (B) as regards other companies as that provision was deliberately enacted in the law in 1914.

Presidency Banks.—The Presidency Banks (Amendment) Act, 1920 (43 of 1920), amends the Presidency Banks Act, 1876, so as to enable the Presidency Banks to deal in securities issued by the Government of Bombay in connection with their Housing and Development loan. It was a temporary measure to deal with a special circumstance which would otherwise have been covered by the provisions of an Act which will be subsequently referred to.

Income-tax.—The Indian Income-tax (Amendment No. 2) Act (44 of 1920) amends the principal Act so as to avoid a difficulty which had arisen in connection with the deduction of the annual value of business premises owned by an assessee. This deduction is no longer allowed, and on the other hand there will be no assessment on such annual value in the future.

Paper Currency.—The Indian Paper Currency (Amendment) Act, 1920 (45 of 1920). The object of the Act is to prescribe the permanent constitution of the Paper Currency Reserve and the temporary arrangements which are necessitated on the expiration of the Indian Paper Currency (Temporary Amendment) Act, 1920. The Bill also alters the ratio at which notes can be issued from the Reserve in exchange for gold coin which is not legal tender or for gold bullion, from 7·53344 grains troy of fine gold per rupee to 11·30016 grains per rupee. This change is consequential on a change in the ratio at which the sovereign and the half-sovereign will in future be legal tender. The Act gives effect to the recommendations regarding the permanent constitution of the Paper Currency Reserve which were made by the Indian Exchange and Currency Committee. These provisions, however, cannot come into operation until the Government of India are in a position to give effect to that constitution, and accordingly the Act continues the provisions in regard to the holdings of securities which were included in the temporary enactment referred to above, with the modification that the limit for the total investment, sterling and rupee taken together, is placed at 85 crores instead of 120 crores authorized by Act 21 of 1920. The Act further provides that all interest derived from securities held in the Reserve shall be applied from April 1, 1921, and so long as it is necessary to do so, to a reduction of the holding of created rupee securities, and the fact of such application should be attested by the Auditor-General every year. Certain other amendments in the Indian Paper Currency Act are made, but they are of purely administrative interest.

Cutchi Memons.—Cutchi Memons Act, 1920 (16 of 1920), enables Cutchi Memons who desire to be governed in matters of succession and inheritance by Muhammadan law to do so by making a declaration under the Act. The Bill was passed at the instance of leading members of the Cutchi Memon community and was originally introduced by the Hon. Mr. Haroon Jaffer, a member of that community. The Act as passed was, as has been shown, of a permissive character, but as introduced it was declaratory of the law applicable to all Cutchi Memons.

Imperial Bank.—The Imperial Bank of India Act, 1920 (47 of 1920), gives legal effect to the fusion into a single bank of the Presidency Banks constituted under the Presidency Banks Act, 1876. The object of the Act is to create a strong unified Bank in close relation with Government to foster and promote the growth of banking facilities in India. The provisions of the Act are of three classes. The first class provides for the constitution of the new Bank and the transfer to it of all the assets and liabilities of the Presidency Banks, and provides for a large initial increase in the capital of the Bank. The terms on which shareholders in the old Banks will acquire shares and option rights in the new Bank are also provided for. These terms give statutory force to the arrangements approved in general meeting by the shareholders of the Presidency Banks. Finally, the dissolution of the Presidency Banks and matters incidental thereto are dealt with.

The second class of provisions prescribes the business which the Bank is empowered to transact. The Bank is enabled to enter into an agreement with the Secretary of State in Council to act as his banker, but the Bank provides that if such an agreement is entered into, power must be reserved to the Governor-General in Council to issue instructions to the Bank in respect of matters which vitally affect his financial policy, and if such instructions are disregarded he may terminate the agreement. The Imperial Bank is allowed to have a London office, but is not permitted to do ordinary exchange business though it may keep accounts and deposits from its Indian customers.

The third class of provisions deals with what may be called the " indoor management " of the Bank. The most interesting features of these provisions are those which, while maintaining a centralized control, allow of a large measure of local autonomy by the constitution of local boards which, in the first instance, must be established at Calcutta, Madras and Bombay. The Legislature was much pressed to include definite provisions for an Indian element on the Central Board of the Bank. It, however, refused to embody in an Act of the Legislature any racial qualification, and took the view that, as regards the elective element, the matter must be left to the shareholders, but provided that normally not more than four non-official persons should be nominated by Government as Governors of the Bank. There was undoubtedly an understanding that the persons so nominated would generally be Indians.

Territorial Force.—The Indian Territorial Force Act, 1920 (48 of 1920), provides for the constitution of an Indian Territorial Force, but is admittedly a measure of an experimental nature intended to provide a framework from which a territorial force can be built up by gradual developments. The organization and terms of service of the Force are closely on the lines of the English Militia, while special provision is made for University Training Corps. The Act leaves details very largely to the rule-making power.

Auxiliary Force.—The Auxiliary Force Act, 1920 (49 of 1920), provides for a Volunteer Force, which, in times before the war, had been constituted under the Indian Volunteers Act, 1869, the provisions of which had long become unsuitable. Compulsory service was adopted in India to meet the needs of an Imperial emergency and was provided for by the Indian Defence Force Act. The decision to revert to voluntary enrolment was the occasion which led to the passing of the Act. The Act sets out in a schedule the training required thereunder and is an

attempt to embody in a more definite form the actual obligations, duties, and rights of persons enrolled in the Force.

2. MADRAS.

Acts passed—15.

Children and Youthful Offenders.—The Madras Children Act, 1920 (4 of 1920), is based to some extent on the Children Act, 1908 (8 Edward VII., c. 67). It provides for the establishment and inspection of certified schools and enables the managers of such schools to board children out or to place children and youthful offenders on licence with approved persons. It provides for the establishment of Juvenile Courts and for the release on bail of juvenile offenders, and restricts the punishments to which they may be sentenced. The Act repeals, so far as it applied to Madras, the Reformatory Schools Act, 1897, a law of the Central Legislature which had hitherto been practically the only law on the subject.

Municipalities.—The Madras District Municipalities Act, 1920 (5 of 1920), amends and consolidates the law on the subject. It does not apply to the City of Madras, which has a law of its own. The object of the legislation is to give effect as far as possible to the recommendations of the Royal Commission on Decentralization in regard to district municipalities and to the views of the Government of India and of the Secretary of State thereon. It has made little change in regard to the constitution of Municipal Councils beyond reducing the number of *ex-officio* members, but aliens are excluded from voting and from standing for election unless specially exempted by the Local Government. The Act contains provisions dealing with election offences. The provisions relating to taxation have been considerably expanded with a view to increasing the financial resources of local authorities. The Councils have been given enhanced powers of dealing with their own establishments, though the Government retains control over the appointment of certain senior officers of the Municipality. The Councils have obtained also considerably greater freedom in dealing with their own budgets. The provisions of the law relating to drainage, water supply, sanitation, overcrowding, factories and town improvement have been greatly expanded.

Town Planning.—The Madras Town Planning Act, 1920 (7 of 1920), is based on a portion of the English Housing and Town Planning Act, 1909 (9 Edward VII., c. 44). It is designed to encourage Municipalities to pay greater attention to this important matter by enabling them to prepare timely schemes of town improvement and to carry out such schemes without permanent financial embarrassment by placing certain limitations on the compensation to be awarded to persons affected and by providing for the levy of betterment contributions recoverable by instalments.

Elementary Education. — The Madras Elementary Education Act, 1920 (8 of 1920), provides for the constitution in each district of a District Educational Council to prepare schemes for the extension of elementary education, to elicit and direct the co-operation of all agencies, whether public or private, engaged in providing elementary education, to regulate the disbursement of Government grants-in-aid to private schools, and to advise the department of the Government con-

cerned as to the provision of trained teachers and other matters. Full control of elementary schools is left with the local bodies or private agencies concerned. The Act enables local bodies, with the sanction of the Government, to levy an education tax, and it provides for the introduction of compulsory education in such areas as are ripe for it. The difficult question of religious instruction is dealt with by providing for an agreement with the managers of private schools for exemption from religious instruction. These agreements are for stated periods, and if on the expiry of the periods the managers do not renew the agreements the District Educational Council has to provide elsewhere for the pupils affected.

Local Boards. — The Madras Local Boards Act, 1920 (14 of 1920), is another Act intended to give effect to the recommendations of the Royal Commission on Decentralization. As in the case of the District Municipalities Act, unimportant modifications have been made in the provisions relating to the constitution of Local Boards, which are of three kinds, namely, District Boards, Taluk Boards, and Union Boards. A Taluk is a part of a District, and a Union is a smaller area with a minimum population of 5,000. At least three-fourths of the members of any of the Boards are to be elected. The remaining members are nominated by various authorities who are required to provide for the due representation of Muhammadans, of depressed classes, and of minorities generally. Aliens are disqualified, though this disqualification may be removed by the Local Government. A District Board may levy a tax on the annual rent value of land, a tax on companies, a profession tax, a tax on houses, and tolls on various classes of traffic, and also with the sanction of Government a pilgrim tax on all persons entering or leaving by railway a centre of pilgrimage. The proceeds of the last-named tax can only be expended for the development or improvement of the place of pilgrimage. A schedule to the Act contains an elaborate set of rules laying down the proportions in which receipts from taxation and other sources are to be credited to the various District, Taluk, and Union funds. The funds of Local Boards are applicable to the construction of roads and bridges, the planting of trees, the construction of hospitals, poor-houses, markets, slaughter-houses, drains, waterworks, tanks and wells, vaccination, sanitation, and in general any measure of local public utility calculated to promote the safety, health, or comfort of the people.

Village Self-government.—The Madras Village Panchayats Act, 1920 (15 of 1920), is still another law the origin of which can be traced to the recommendations of the Royal Commission on Decentralization. It provides for the constitution by election of Village Panchayats or Committees, holding office for three years. The panchayats have power to deal with the construction of roads, bridges, wells and buildings, lighting, drainage, burial grounds, vaccination, registration of births and deaths, cattle pounds, and libraries. Local Boards may also delegate certain of their functions to the panchayats within their jurisdiction, and the Local Government may confer on them certain additional powers and may permit them to levy taxes and fees. The promoters of the measure anticipated that it would help to rouse the communal spirit and enable villagers to gather experience in the management of local affairs and so to fit themselves in course of time to take a more active part in promoting the broader interests of their district, province, and country.

The other Acts passed during the year were of purely local interest or merely made minor amendments in the existing law.

3. BOMBAY.

Acts passed—21.

Municipalities. — The City of Bombay Municipal (Amendment) Act, 1920 (5 of 1920), enables the Corporation to exercise a much wider control than it has hitherto possessed over the laying out of private lands as streets and for building purposes. The Municipal Executive has power to require notice to be given and plans prepared by licensed surveyors to be submitted.

Prostitution.—The City of Bombay Police (Amendment) Act, 1920 (6 of 1920), enhances the powers of the police for dealing with the keepers of brothels by (*a*) providing for their removal without the limits of the City of Bombay, and (*b*) imposing deterrent punishments for detaining women against their will.

Public Conveyances.—The law on this subject was contained in an Act of 1863. The Bombay Public Conveyances Act, 1920 (7 of 1920), consolidates the law with certain amendments designed for the most part to bring it into conformity with modern conditions.

Village Self-government.— The Bombay Village Panchayats Act, 1920 (9 of 1920), has the same objects in view as Madras Act 15 of 1920 referred to above and is drawn on very much the same lines.

Primary Education.—The City of Bombay Primary Education Act, 1920 (15 of 1920), follows the lines of Bombay Act 1 of 1918. It enables the Municipal Corporation of the City of Bombay to introduce free and compulsory primary education by stages with the sanction of the Local Government, who must be first satisfied that the Corporation is in a position to make adequate financial provision. The Act penalizes parents who persistently default and persons who employ children of school-going age.

Legal Practitioners. — The law relating to pleaders in the Bombay Presidency was contained in enactments most of which were passed more than half a century ago. The Bombay Pleaders Act, 1920 (17 of 1920), consolidates the law and introduces certain amendments which experience has shown to be necessary. The pleaders are of two classes, namely, Vakils of the High Court and District Pleaders. The former can practise before all the regular Courts of the Presidency and can also appear in numerous proceedings of a miscellaneous nature. The District Pleaders are, however, confined to one district, and, as far as the Civil Courts are concerned, can only practise in such Courts as may be assigned to them by the District Judge. They may, however, obtain transfers to another district under the orders of the High Court. A schedule to the Act contains a set of rules for computing pleaders' fees. Pleaders guilty of improper conduct can be removed, suspended, or otherwise punished.

The remaining fifteen Acts passed during the year introduced comparatively minor amendments into local laws.

4. BENGAL.

Acts passed—8.

Cruelty to Animals.—The Calcutta Cruelty to Animals Act, 1920 (1 of 1920), is mainly a consolidation of the law on the subject. It applies to Calcutta only in the first place, but may be extended to other towns. It penalizes all forms of ill-treatment of domestic and captured animals and enables Government to establish infirmaries for the care and treatment of animals in respect of which offences have been committed under the Act. Power is taken to destroy animals whose sufferings are such as to render such a course proper.

Military Police. — The Eastern Bengal and Military Police were at one time a single organization. Since the repartition of 1912 there have been two distinct bodies, and the Eastern Frontier Rifles (Bengal Battalion) Act, 1920 (2 of 1920), re-enacts the law for the Bengal Military Police and takes the opportunity to change the designation of the force.

Rent.—The Calcutta Rent Act, 1920 (3 of 1920), is on much the same lines as the Bombay Rent (War Restrictions) Act 2 of 1918. It remains in force for three years and applies in the first place to Calcutta only, but may be extended by the Local Government to other towns or areas. Standard rents are fixed with reference to the rent on a particular date, and any excess over the standard rent is, except in special circumstances, irrecoverable.

Alluvial Lands.—The object of the Bengal Alluvial Lands Act, 1920 (5 of 1920), is to prevent disputes concerning the possession of land newly formed by alluvion. Such lands may be attached by an officer of Government who, after having caused a survey to be made and maps to be prepared, refers the case to the Civil Court, which hears claims and determines the question of title.

Agricultural and Sanitary Drainage. — The Bengal Agricultural and Sanitary Improvement Act, 1920 (6 of 1920), consolidates and amends the law relating to the construction of drainage and other works for the improvement of the agricultural and sanitary conditions of certain areas in Bengal. The old law, contained in half a dozen different enactments, was found to be too rigid. The new law contains only the essentials of procedure and provides the necessary elasticity by relegating details to rules.

Red Cross Society.—The Indian Red Cross Society (Bengal Branch) Act, 1920 (8 of 1920), exactly follows the Indian Red Cross Society Act, 1920, passed in the Imperial Legislative Council earlier in the year. It constitutes a provincial branch of the main Society.

Two other Acts were passed in the year amending in minor details the Calcutta Pilots Act, 1859, and the Calcutta Port Act, 1890.

5. UNITED PROVINCES.

Acts passed—7.

Irrigation.—The U.P. Minor Irrigation Works Act, 1920 (1 of 1920), is designed to regularize a practice which had been in force for some years in parts of the United Provinces. Officers of Government had been empowered by executive rules to enter into agreements with landowners for the construction of tanks and other minor irrigation works

by Government agency, but at the expense of the landowners. Difficulties arose as to the enforcement of these agreements. A statutory procedure has now been evolved which is far simpler than that applying to major irrigation works as laid down in the Canal and Drainage Act, 1873.

The United Provinces Private Irrigation Works Act, 1920 (2 of 1920), enables land to be acquired on behalf of landowners who desire to construct irrigation works for the benefit of their estates at their own expense.

Universities. — The Lucknow University Act, 1920 (5 of 1920), provides for the constitution of a unitary teaching and residential University at Lucknow. Its details are almost identical with those of the Dacca University Act, 1920, passed earlier in the year in the Imperial Legislative Council.

Village Self-government. — The United Provinces Village Panchayat Act, 1920 (6 of 1920), is a somewhat more elaborate measure than the Madras and Bombay Acts referred to above. In addition to powers to arrange for the improvement of education, sanitation, water supply, etc., the village panchayats are given jurisdiction in petty civil and criminal cases. The village fund consists of fees received from litigants in the village Court, fines imposed by the Court and grants by Government, local bodies, or private persons. There is no power to levy taxation.

Estates Succession. — The object of the Agra Estates Act, 1920 (7 of 1920), is to prevent the dismemberment of the more important landed estates in the province of Agra. It was introduced at the almost unanimous request of the bigger landowners of Agra. It provides a law similar to that governing the succession to taluqdars' estates in Oudh and it applies only to estates which satisfy certain conditions and whose owners apply to be brought under its operation. When Part I of the Act has been applied, the holder's powers of bequest and transfer are governed by the personal law applicable to him. If he dies intestate, the estate goes to a single heir according to an order of succession laid down in the Act. On the further application of Part II the estate may become inalienable.

6. PUNJAB.

Acts passed—3.

Customary Law. — The Punjab Limitation (Custom) Act, 1920, and the Punjab Custom (Power to Contest) Act, 1920 (1 and 2 of 1920), are the outcome of the recommendations of a committee appointed by the Local Government to examine the feasibility of codifying customary law in the Punjab. The former Act fixes definite periods of limitation for suits relating to alienations of ancestral immoveable property and the appointment of heirs by persons who follow the customary law. The latter Act imposes restrictions on the power of descendants and collaterals to contest an alienation of immoveable property or the appointment of an heir on the ground that that alienation or appointment is contrary to custom.

The remaining Act of 1920 removes by amendment a defect in the law relating to the colonization of Government lands in the Punjab.

7. BIHAR AND ORISSA.

Acts passed—9.

Municipalities. — The Bihar and Orissa Municipal Survey Act, 1920 (1 of 1920), enables the Local Government to order that a survey and record shall be made of lands within the Municipality, and, where such an order has been made, gives the Survey officers powers of entry and authority to compel the production of evidence. Entries in the records so prepared and finally published are to be presumed to be correct in any suit to which the Municipality is a party. This Act, as in the case of several of the laws passed in this province, replaces with amendments the Bengal law which was applicable to Bihar and Orissa.

Places of Pilgrimage. — The Bihar and Orissa Places of Pilgrimage Act, 1920 (2 of 1920), may be extended to any centre of pilgrimage. Where it applies, pilgrims can only be lodged in houses covered by licence, which is not granted until a Health Officer has certified that the house satisfies prescribed requirements. The Local Government may impose a terminal tax, and a Lodging House Fund is constituted, to which are credited fees, fines, and penalties recovered under the Act, grants from the Local Government, and the proceeds of the terminal tax, if any. The Fund is applicable to the payment of the salaries of the Health Officer and his establishment, to the provision of medical relief, and to the improvement of sanitary arrangements.

Mining Settlements.—The Bihar and Orissa Mining Settlements Act, 1920 (4 of 1920), re-enacts with amendments the law relating to the control and sanitation of mining settlements, and makes provision for preventing or checking outbreaks of epidemic disease. Among other matters it requires mine-owners to provide house accommodation and sanitary arrangements for their labourers, and enables orders to be issued to owners to take special measures with regard to their property.

Other Acts passed in the year were either of local interest or amended local laws.

8. CENTRAL PROVINCES.

Acts passed—5.

Agricultural Tenancy. — The Central Provinces Tenancy Act, 1920 (1 of 1920), is the most important law passed by the Local Council during the year. It effects a thorough overhaul of the law of agricultural tenancies in the Central Provinces, but the subject is far too complicated and technical to be dealt with here.

Village Sanitation.—The Village Sanitation and Public Management Act, 1920 (2 of 1920), re-enacts with amendments the law which provided for the control of village sanitary arrangements by an elected panchayat. In addition to conservancy and water supply, the construction of roads and local works of public utility are placed under the control of the panchayat.

Primary Education.—The Central Provinces Primary Education Act, 1920 (3 of 1920), enables the local authority, with the sanction of the Local Government, to introduce compulsory primary education in the local area within its jurisdiction. The provisions of the Act are similar to those of Bombay Act 15 of 1920 referred to above.

Local Self-government. — The Central Provinces Local Self-government Act, 1920 (4 of 1920), is an important Act amending very considerably the law which had hitherto been contained in an Act of 1883. Its objects are the constitution of district councils and local boards as popular elected bodies, the enhancement of their financial resources, and a considerable relaxation of Government control over their powers of dealing with their internal affairs.

Village Self-government.—The Central Provinces Village Panchayat Act, 1920 (5 of 1920), is on the same lines as the U. P. Act 6 of 1920.

9. ASSAM.

Act passed—1.

Military Police.—The Assam Rifles Act, 1920, does for Assam what the Bengal Act 2 of 1920 does for Bengal.

10. BURMA.

Acts passed—9.

Rent.—The Rangoon Rent Act, 1920 (2 of 1920), is a combination with slight modifications of the provisions of the two Bombay Rent Acts (2 of 1918 and 7 of 1918). It fixes the standard rents and prohibits, except in special circumstances, the recovery of rent in excess of the standard.

Municipalities. — Early in the year the Chief Court of Lower Burma issued an injunction against the Municipality of Rangoon prohibiting them from using a particular depot for the disposal of sewage on the ground that it constituted a nuisance. The Rangoon Municipal Sewage Act, 1920 (4 of 1920), gives the Committee statutory power to dispose of its sewage even though such disposal may constitute a nuisance.

Town Development. — The Rangoon Development Trust Act, 1920 (5 of 1920), constitutes a Development Board for the expansion and improvement of the City of Rangoon and its neighbourhood. There is very little that is new in the Act, which is made up of provisions borrowed from the Housing and Town Planning Act, 1909, the Bombay and Calcutta Municipal Acts of 1888 and 1899 respectively, the Bombay and Calcutta Improvement Acts of 1898 and 1911, and the Bombay Town Planning Act of 1915.

Small Cause Courts. — The Rangoon Small Cause Court Act, 1920 (7 of 1920) places the Small Cause Court of Rangoon on practically the same footing as similar Courts in the Presidency Towns.

Registration of Business Names.—The object of the Burma Registration of Business Names Act, 1920 (8 of 1920), is to provide a machinery for preventing the late enemies of the Empire from disguising their nationality and trading under false or assumed names. It is substantially based on the English Registration of Business Names Act, 1916.

Universities. — The University of Rangoon Act, 1920 (9 of 1920), provides for the establishment and incorporation of a teaching and residential university at Rangoon.

The other Acts passed in the year amended local laws.

11. REGULATIONS UNDER S. 71 OF THE GOVERNMENT OF INDIA ACT, 1915.

Regulations made—4.

Regulation 1 of 1920 validates sentences passed and acts done under Martial Law in parts of the North-West Frontier Province during a portion of the year 1919 and indemnifies persons acting in good faith.

Other Regulations were of minor importance.

12. ORDINANCES UNDER S. 72 OF THE GOVERNMENT OF INDIA ACT, 1915.

Ordinances made—4.

The Treaty of Peace Ordinance No. 1 of 1920 is made to give effect to the provisions of art. 296 of the Treaty of Peace with Germany pending the issue of an Order in Council applicable to India on the lines of the Treaty of Peace Order, 1919, which did not apply to India. Similarly the Treaty of Peace (Austria) Ordinance, No. 4 of 1920, is designed to give temporary effect to art. 248 of the Treaty of Peace with Austria. It is likewise replaced by an Order in Council.

The Rouble Note Ordinance, No. 2 of 1920, continues certain of the provisions of the Ordinance of 1919 on the same subject which was on the point of expiring. It provides that rouble notes in deposit at the Government Treasuries under the provisions of the former Ordinance should not be withdrawn save with the permission of Government. It prohibits import and penalizes possession. It was repealed and re-enacted with slight modifications by an Act of the Legislature a few months later.

The Gold Ordinance, No. 3 of 1920, was rendered necessary by large illicit importations of sovereigns across the land frontiers of British India in order to avoid their acquisition at a fixed rate of ten rupees under the Gold (Import) Act of 1917. The Ordinance enacts as a temporary measure that gold coins issued under the Indian Coinage Act of 1906 should cease to be legal tender, but a period of grace of 21 days was allowed within which such coins might be delivered to the Treasury. The Ordinance was repealed by the Indian Coinage (Amendment) Act, 36 of 1920, which declares that gold coins should be legal tender at the rate of ten rupees to the sovereign.

VI. EASTERN COLONIES.

1. HONG-KONG.

[*Contributed by* C. G. Alabaster, Esq., O.B.E.]

1919.

Ordinances passed—23.

Much of the legislation of the year was passed to bring the law of the Colony into line with the post-war legislation of the United Kingdom. Thus the Non-Ferrous Metal Industry Ordinance (No. 1) is based on 7 & 8 Geo. V., c. 67, and The Banking Business (Prohibited Control)

Ordinance (No. 2) on 8 & 9 Geo. V., c. 31. Other Ordinances prescribed the date of the termination of the war and made provision for the vesting of property in the Custodians of Enemy Property in Hong-Kong and China (Nos. 9, 11, and 12).

Capital Conversion. — The remarkable rise in the value of silver which was accentuated in the following year induced the directors of two insurance companies and a bank to obtain legislative sanction for the conversion of their silver capital into gold (Nos. 4, 5, and 6).

The operative clauses in these Ordinances were in the following form:

The company may at any time by special resolution convert its silver capital as existing at the date of the confirmation of such special resolution, and such conversion shall take effect upon such special resolution being confirmed. Any such conversion may be into such form of gold currency and at such rate of exchange and upon such terms and conditions as may be sanctioned by the special resolution effecting the conversion.

Upon the filing of any such special resolution . . . the Registrar of Companies shall issue a fresh certificate of incorporation of the company showing the capital of the company as affected by such conversion. Such fresh certificate shall take the place of the original certificate of incorporation of the company and shall be the certificate of incorporation of the company.

Former Enemy Aliens. — By Ordinance No. 16 no person who is a citizen or subject of a State with which His Majesty was at war during the year 1918 may come to or be within the Colony of Hong-Kong either generally or for a limited period unless he possesses a permit for that purpose signed by the Colonial Secretary. The Ordinance continues in force for three years from the end of August 1919.

Indictments. — The Indictments Ordinance (No. 17) follows 5 & 6 Geo. V., c. 90.

Sugar Convention.—Ordinance No. 19 repeals the Sugar Convention Ordinance of 1904.

Rice.—A shortage in the staple food of the majority of the inhabitants, due to a variety of causes, led to the passing of the Rice Ordinance (No. 20) empowering the Government to seize rice—on payment of compensation—to fix standards of quality, and to fix the retail price.

Military Service.—The Military Service Ordinances of 1917 and 1918 were repealed.

Other Ordinances dealt with increasing the penalties for smuggling arms and ammunition, the protection of Marine Stores, the Regulation of Places of Public Entertainment, and the establishment of a special residential district in one of the smaller islands of the new Territories.

1920.

Ordinances passed—17.

No Ordinance of outstanding interest was passed in 1920.

Ordinance No. 1, the Foreign Corporations (Execution of Instruments under Seal), Ordinance provides that the power of attorney or other document of authorization of an agent of a foreign corporation need not be under seal unless a seal is required by the law of the State in which the corporation is incorporated.

Volunteers. — A new Ordinance for the formation of a volunteer force became necessary on the disbanding of the two local forces which had done service during the war (No. 2).

Unlawful Societies.—The Societies Ordinance, 1911, which required every society to register or to obtain special exemption from registration, having proved unnecessary, was repealed and in its place Ordinance No. 8 of 1920 declared unlawful the Triad Society, all societies which use a Triad ritual, and all societies which have among their objects unlawful purposes or purposes incompatible with the peace and good order of the Colony.

Protection of Plants.—The Plants Ordinance (No. 11) made it lawful for the Governor in Council to make such regulations as he shall think expedient for the purpose of protecting trees and shrubs from destruction, injury, or removal. An unusual feature is the provision that in any such regulations the onus of proof may be thrown on the defendant.

Intimidation. — The Criminal Intimidation Ordinance is adapted from s. 503 of the Indian Penal Code and makes it an offence to threaten with injury to the person, reputation, or property with intent to alarm or to cause a person threatened to do any act which he is not legally bound to do or to omit to do any act which he is legally entitled to do.

The other Ordinances of the year 1920 are without special interest.

2. STRAITS SETTLEMENTS.

[*Contributed by* A. DE MELLO, ESQ.]

Ordinances passed—30.

Labour (No. 19).—This is a consolidating and amending Ordinance, modelled on the Labour Code (Enactment No. 6 of 1912) of the Federated Malay States (vide *Journal*, vol. xiv., *Review of Legislation*, p. 90), but the following provisions (shown by experience to be necessary for the efficient working of the prior Ordinance 1882–1919) are new:

(*a*) S. 73 (1), which provides that every Chinese immigrant-ship arriving at any port in the Colony shall be visited by a health officer.

(*b*) S. 74, which provides for the examination of Chinese immigrants arriving in the Colony by train.

(*c*) S. 81, which enacts that, whenever any Chinese immigrant, who is indebted for passage-money, etc., enters into an engagement to labour in the Colony, or the Federated Malay States, or such other Malay States as Johore, Kedah, or Trengganu, his creditor shall appear before, and furnish information to, the Protector of Chinese as to the particulars of such engagement.

(*d*) S. 84, which imposes a penalty on the master, etc., of a Chinese immigrant-ship for having on board immigrants from the port of departure in excess of the number stated in the certificate.

(*e*) S. 85, which imposes a penalty on the master of a Chinese immigrant-ship for not having sanitary arrangements on board for immigrants in accordance with the rules made by the Governor in Council.

(*f*) S. 86, which deals with stowaways on Chinese immigrant ships.

(*g*) The definition of "estate" in s. 144, which is widened to include any quarry, brickfield, or oil-station on which 25 or more labourers are

employed, and to which the provisions or any portion of the provisions of Part X. of the Ordinance are applied by Governor's notification.

(*h*) S. 150, which relates to the erection of "lines" (= labourers' dwellings) on an estate.

(*i*) S. 197, which provides that a notice-board on which shall be painted the name of the "estate," etc., shall be erected by the high road at the main entrance to the estate.

(*j*) S. 109, which provides that any Chinese immigrant, who is indebted for passage-money and has entered into an engagement to labour in any place beyond the Colony and Federated Malay States, shall, before he emigrates, appear in person before the Protector of Chinese, in order that he may ascertain whether the contract or agreement is valid, and whether the labourer fully understands and is willing to be bound by the terms of the engagement.

(*k*) S. 210, which reproduces almost in its entirety s. 7 of Ordinance 12 of 1910, which had been repealed by Ordinance 16 of 1914, The provisions of the repealed section, which were designed for the protection of persons engaged to take part in any exhibition or in any theatrical, musical, or spectacular performance, are re-enacted on instructions from the Secretary of State for the Colonies.

(*l*) S. 252 (1) (d), which empowers the Governor in Council to make rules prescribing the accommodation and sanitary arrangements to be provided and maintained on board immigrant-ships bringing immigrants to this Colony.

Mosquitoes, Destruction (No. 15). — Amends Ordinance No. 38 of 1919 by providing penalties against owners and occupiers of land, not only for active interference with works constructed for the destruction of mosquitoes, but also for using their land in such a way as to allow such works to be damaged. It also establishes a kind of union between the health officer and the Municipality or Rural Board, whose employee he is in fact.

Police Force (No. 20).—Except for minor amendments, this Ordinance consolidates several prior Ordinances beginning from 1872 to 1914, dealing with the constitution, powers, duties, and discipline of the Police Force. The principal amendments are as follows:

(*a*) S. 2 deals with alterations in nomenclature.

All members of the Police Force are classified as "Gazetted Police Officers" and as "Enrolled Police Officers," and these latter are again subdivided into "Superior Police Officers," "Subordinate Police Officers," and "Constables."

(*b*) Under S. 7 (2) the members of the Railway Police Force of the Federated Malay States, while on duty in the Colony, are placed in the same position as the members of the Police Force of the Colony.

(*c*) S. 13 prohibits the attachment or the taking in execution of the pay or the person of a Subordinate Police Officer or Constable for debt.

(*d*) S. 20 permits an Enrolled Police Officer, on the expiry of his first period of service, to continue in the force on a contract of service from month to month. Hitherto, such officer had to bind himself for definite periods.

(*e*) S. 26 (2) authorizes the additional punishments of compulsory drills or fatigue duties in the case of constables guilty of various breaches of police duties.

(*f*) Part IV. (ss. 30–40 inclusive) is new, and provides for the creation

of a Volunteer Police Reserve for service in each Settlement of the Colony. The service is to be purely voluntary, and any British subject other than a member of the Army or Navy or Defence Force may volunteer for service.

Provision is made under s. 36 for calling out for service in case of actual or apprehended riot or invasion.

S. 37 authorizes the grant of pensions or gratuities not exceeding $2,000 to reservists disabled on service, and to widows and families of those killed on service.

Under s. 38 officers and members of the Police Reserve, when called out for active service, are given the same powers, rights, and immunities as members of the Police Force.

(*g*) S. 50 provides for the grant of gratuities or other relief to dependents of Enrolled Police Officers. Hitherto there had been no legal authority for such a grant to dependents of such officers killed in the discharge of their duties.

(*h*) S. 52, following the Pensions Ordinance, 1887, prohibits the assignment of pensions, and provides for termination thereof on bankruptcy or conviction on a criminal charge.

(*i*) S. 57 legalizes the issue of necessary departmental and routine orders by the Inspector-General or a Chief Police Officer, the former being allowed to promulgate orders for the whole Colony, while the orders issued by the latter have only local application to each Settlement of the Colony.

Schools Registration (No. 21). — The Education Department of the Government had hitherto exercised control and supervision over Government Schools, and such schools as received aid from Government. Other schools, however, were entirely independent of Government control. This was found an unsatisfactory state of affairs, and this Ordinance, based on similar law in the Colony of Hong-Kong, gives the Education Department legal control over all schools, and enforces registration of all schools of 15 or more pupils and of all teachers employed in them. It is hoped thus to ensure that the education of future citizens is conducted by suitable persons on suitable lines.

The Director of Education is empowered, subject to appeal to the Chief Secretary, to close any school which does not comply with its requirements, and any school which is not necessary for educational purposes.

The Governor in Council may make grants-in-aid to Schools (s. 20). A similar Enactment (No. 27) has been passed for the Federated Malay States.

3. FEDERATED MALAY STATES.

[*Contributed by* A. DE MELLO, ESQ.]

Enactments passed—32.

Births and Deaths Registration (No. 13) amends the prior law so as to prevent errors and inaccuracies in the records of the *état civil* by dividing each of the four States (Selangor, Perak, Negri Sembilan, and Pahang) into such number of registration areas as their respective Residents consider necessary (s. 3). Each registration area is placed in charge of a Registrar and Deputy Registrar appointed for the purpose,

whose business is to see that all births and deaths in their area are reported and correctly registered. There is too a Registrar-General for the whole of the Federated Malay States, and such number of Registrars and Deputy Registrars in each State as may be necessary.

The registers may be searched at any time, and certified copies of entries will be *prima facie* evidence in all Courts of the dates and facts set forth therein (s. 10).

The Enactment sets out the persons on whom the duty of reporting is cast (s. 12), and provides penalties for failure to report (ss. 13, 19, 20, and 21). Provision is also made for post-registrations and rectifications of errors (s. 23).

Customs (No. 31) re-enacts as a Federal enactment the various State Enactments, beginning from 1898, relating to customs duties; and, except in matters of detail, reproduces the prior law. The power to fix duties and to make rules, hitherto vested in the Resident (the Chief Executive Officer) attached to each individual State, with the approval of the Chief Secretary to Government, is now transferred to the latter functionary alone.

The superintendence and management of all matters relating to customs throughout the Federated Malay States are conferred on the Commissioner of Customs, subject to the direction and control of the Chief Secretary.

Schools, Registration (No. 27). — This is a replica of the Straits Settlements Ordinance (No. 21 of 1920), and unifies the system of registration of educational establishments for the whole of Malaya (*vide supra*, p. 144).

Minor Offences (No. 25) re-enacts, with amendments, the State laws relating to small offences beginning from 1898, and incorporates a number of the provisions contained in the Minor Offences Ordinance No. 13 of 1906 of the Straits Settlements. It provides increased protection for traffic on the public roads, and a summary remedy for damage caused by animals straying on public or private property. It provides for the licensing of second-hand dealers and pedlars, and prohibits the unauthorized use of uniforms and of Government survey-marks, and repeals the State Enactments (beginning from 1894) relating to these matters.

Police Force (No. 22) consolidates, like the analogous Ordinance No. 20 of 1920 of the Straits Settlements (*vide supra*, p. 143), into one Federal enactment the State laws, beginning from 1897, relating to the constitution of the Police Force, and the granting of pensions to Asiatic members thereof. In addition to alterations of detail, corresponding to those of the Straits Settlements Ordinance, it legalizes the position of persons appointed for police duties by a Government Department (s. 26), and removes dismissal and confinement in prison from the list of punishments which may be inflicted by the officer authorized to try offences committed by members of the Police Force (ss. 30 to 33). It provides for the granting of pensions, gratuities, or other allowances to the dependents of Asiatic members of the Force (s. 37), and increases the jurisdiction of a Chief Police Officer from $100 to $500, the latter being the limit prevailing in the Straits Settlements for the administration of the moveable property of intestates taken charge of by him for the purpose of safe custody (s. 40).

Probate and Administration (No. 4). — Enactment No. 14 of 1918

having constituted one Supreme Court for the whole Federation, the State laws of 1904 providing for grant of Probate and Letters of Administration were necessary to be replaced by a Federal measure. Hence this new Enactment, which, besides reproducing prior Enactments of the States in Federal form, and in terms rendering Probate and Letters of Administration operative throughout the Federation, contains the following new features:

S. 27 provides for allowing to executors and administrators a commission, which may perhaps tend to overcome a not uncommon reluctance to assume the burden of the office.

Ss. 28 to 36 (c. 3) supersede the prior State Enactments (of 1905) relating to Official Administrators, the duties incidental to which post are proposed to be combined with those of another new executive department.

S. 82 exempts Official Administrators and Trustees from the obligation to give security, a matter which has often created difficulty in the past.

Ss. 151 to 156 (c. 15) provide for resealing Probates or Letters of Administration granted under a State law, so as to render them operative throughout the Federation.

Ss. 157 to 171 (c. 16) provide for resealing Probates or Letters of Administration granted in the Straits Settlements or (subject to reciprocity being assured) in the United Kingdom, or any British Possession.

Trustees (No. 19) enacts, with the necessary modifications, the Trustee Ordinance No. 28 of 1914 of the Straits Settlements (vide *Review of Legislation*, p. 63 in *Journal*, vol. xvi.), which again was modelled on the Trustee Act, 1893, of the United Kingdom. The Enactment mitigates the terrors of the office of trustee, by laying down rules for his guidance in the execution of the trust. It sets out the class of investments in which he may place trust funds (s. 3), and protects him against charges of breach of trust for loss incurred in lawful investments, if he acts with prudence and caution (ss. 6 and 7). It provides for the appointment of new trustees (s. 8) and the retirement of trustees (s. 9), and lays down provisions for the guidance of a trustee for sale (ss. 11 and 12). It authorizes a trustee to appoint solicitors and bankers to assist him (s. 13), and provides for the conduct of the business of a trust (ss. 14 to 22).

Part III of the Enactment (ss. 23 to 40) empowers the Court to appoint trustees when necessary, and provides for vesting the trust property in them.

Lastly, any trustee may apply to the Court for advice (s. 40), and thereby escape responsibility if he acts honestly.

Waters (No. 9).—Damage had frequently been caused by obstruction or diversion of, or other interference with, rivers and streams, riverbeds had been encroached upon for building sites, and those whose agricultural or other operations necessitated the introduction or elaboration of drainage systems had not always been liable to contribute to the rest of the establishment and maintenance of such systems.

This Enactment remedies these evils, by preventing unauthorized interference with rivers and streams and imposing on those responsible for any such interference the cost of remedying it, provides for the restriction of building operations in immediate proximity to rivers, and

consolidates and amends the State laws hitherto in existence by regulating the constitution of drainage areas and irrigation areas and imposing rates in respect thereof.

4. MAURITIUS.

[*Contributed by* E. KOENIG, ESQ., *Procureur-Général.*]

During the session 1920 fifty-nine Ordinances were passed by the Council of Government and assented to by the Governor, of which the following are the most important or otherwise require special notice:

The Slaughtering of Cattle Restriction (Amendment) Ordinance, 1920 (No. 1), which empowers officers of police and sanitary officers to prosecute for all offences against the Regulations made under the Slaughtering of Cattle Restriction Ordinance, 1918.

The Customs Tariff (Amendment) Ordinance, 1920 (No. 2), which increases by 2 cents of a rupee per 100 kilos the export duty on sugar, the produce of the Colony, and the sum thus obtained being applied for the purpose of destroying the pest known as *Phytalus Smithi*.

The Companies (Amendment) Ordinance, 1920 (No. 3), which provides for the issue, transfer, and giving in pledge of debentures by companies registered in the Colony.

The Stray Dogs Destruction Ordinance, 1920 (No. 5), which provides for the seizure and eventual destruction of stray dogs, the large number of which would constitute a grave danger in case rabies were introduced into the Colony.

The Treaty of Peace Ordinance, 1920 (No. 8), which adapts to the circumstances of the Colony the provisions of the Treaty of Peace Order, 1919.

The Pension Law (Amendment) Ordinance, 1920 (No. 10), which makes service in Mauritius continuous with service in any of the colonies mentioned in the schedule, for pension purposes.

The Stamps (Amendment) Ordinance, 1920 (No. 17), which raises stamp duties from 15 cents and above by about 50 per cent., stamp duties levied for postal purposes being excepted.

The Registration (Amendment) Ordinance, 1920 (No. 18), article 2 of which raises certain registration duties from ¼ per cent. to ½ per cent. Article 3 imposes a uniform proportional duty of 2 per cent. on the several Acts set forth in article 69, paragraph VII of the Arrêté of 16 Frimaire, Year XII, instead of the decreasing rate imposed by article 1, paragraph (ii), of Ordinance No. 26 of 1852. Article 4 removes the exemption granted to the sales of merchandises described in article 14 of Ordinance No. 3 of 1838. Article 5 raises from 50 cents to 1 rupee per 1,000 rupees the duty for transcribing deeds of sale or transfer of property, thereby assimilating it to the duty for inscribing privileged or mortgaged claims fixed in the same schedule at 1 rupee per 1,000 rupees.

The Tobacco (Amendment) Ordinance, 1920 (No. 20), which empowers the Governor to remit the tax provided by Ordinance No. 19 of 1890, with a view to the encouragement of the cultivation of tobacco.

The Profiteering Ordinance, 1920 (No. 22), which reproduces the provisions of the Profiteering Act, 1919, with certain modifications.

The Customs Consolidated Tariff (Amendment) (No. 3) Ordinance,

1920 (No. 24), which has been introduced in view of the frequent changes in the rate of exchange, and in order to dispense with the necessity of having recourse to the Council of Government whenever such rate has to be altered.

The Sanitation (Amendment) Ordinance, 1920 (No. 29), which gives a right of appeal against the orders issued by the Sanitary Authority under article 3 of the Sanitation Consolidating Ordinance, 1900.

The Paper Currency (Amendment) Ordinance, 1920 (No. 30), which allows the introduction into the Colony of Indian Currency Notes.

The Mauritius Sugar Syndicate Ordinance, 1920 (No. 31), which facilitates the sale of the sugars of the 1920-21 crop to the Sugar Commission.

The District Court (Criminal Jurisdiction) Amendment Ordinance, 1920 (No. 33), which brings the offences of " defamation " and of " indecent assault," which are generally of a trivial nature, within the jurisdiction of a magistrate sitting alone.

The Contracts of Service (Rodrigues) Ordinance, 1920 (No. 35), which empowers the magistrate of Rodrigues to pass contracts of service to be performed in Mauritius.

The Merchant Shipping (Amendment) Ordinance, 1920 (No. 40), which was introduced for the purpose of recognizing the certificates of competency of masters and mates, issued in Seychelles.

The Sale of Bread Ordinance, 1920 (No. 43), which empowers the Receiver-General to make regulations applicable to the whole Colony except the town of Port Louis, to control the sale of bread.

The Mauritius Stock Breeders' Association Incorporation Ordinance, 1920 (No. 44), which empowers the Governor to issue, under Ordinance No. 22 of 1874, a Charter of Incorporation to the society, " The Mauritius Stock Breeders' Association," formed to promote the improvement of the industry of raising live-stock.

The Treaty of Peace (Austria) Ordinance, 1920 (No. 46), which adapts to the circumstances of the Colony the provisions of the Treaty of Peace (Austria) Order, 1920.

The Treaty of Peace (Bulgaria) Ordinance, 1920 (No. 47), which adapts to the circumstances of the Colony the provisions of the Treaty of Peace (Bulgaria) Order, 1920.

The Stamps (Amendment No. 3) Ordinance, 1920 (No. 49), which applies the item of the Stamp Ordinance (No. 2 of 1869) providing for the Stamp Duty to be levied on passports, to the Certificates of Identity issued in lieu of passports to those foreigners, principally Chinese people, whose country of origin is not locally represented by a Consul.

The Profiteering (Additional Powers) (Amendment) Ordinance, 1920 (No. 52), articles 2 and 3 of which amend Ordinance No. 22 of 1920: article 2 by enabling the Local Committee to disregard the fact of successive sales when the consequence of such successive sales has been an undue inflation of price; article 3 by making it an offence on the part of a person against whom a complaint has been lodged to refuse to sell to the complainant or to certain other person connected with the complaint.

The other articles deal with unreasonable rents, to the investigation and control of which the jurisdiction of the Local Committee is extended.

Those provisions are mainly borrowed from the Increase of Rent and Mortgage Interests (War Restrictions) Act, 1915 (5 & 6 Geo. V.,

c. 97) and from a South African Bill entitled the Rents Act, 1920, published in *The Union Gazette Extraordinary* of March 30, 1920.

The District Courts (Civil Jurisdiction) Amendment Ordinance, 1920 (No. 55), the District Court (Criminal Jurisdiction) Amendment (No. 3) Ordinance, 1920, (No. 56), and the Ushers' Fees Ordinance, 1920 (No. 57), which raises by about 30 per cent. the tariff of fees payable to ushers.

The Maintenance Orders (Facilities for Enforcement) Ordinance, 1920 (No. 25), which reproduces the provisions of the Maintenance Orders (Facilities for Enforcement) Act, 1920.

5. CEYLON.

[*Contributed by* L. MAARTENSZ, ESQ., *District Judge, Colombo.*]

Ordinances passed—24.

The majority of the ordinances passed merely introduced amendments of an unimportant character.

Education.—The Education Ordinance (No. 1). The object of the Ordinance is to make better provision for Education and to revise and consolidate the ordinances dealing with Education.

Hitherto there was no special legislation dealing with the Department of Education, although in the repealed Education Ordinances references are made to the Director of Education and to certain powers conferred on him.

Part 1 of the Ordinance contains the provisions which deal with the statutory establishment of the Department of Education, at the head of which is placed the Director of Education.

Part 2 deals with the constitution and work of the Board of Education. The Board is composed of not less than 16 and not more than 20 members nominated by the Governor, of whom the Director and Assistant Director of Education and two unofficial members of the Legislative Council are to be four.

The Board may make regulations dealing with (1) Elementary and Secondary Education, (2) Training of Teachers, (3) Intermediate and Night Schools.

Part 3.—By s. 13 no applicant is to be refused admission into an assisted school on account of religion, nationality, race, caste, or language.

S. 15 provides that attendance at, or abstention from, any religious observance is not to be made a condition of admission to any such school.

Part 4 provides for local committees which are to assist the central authority in working the Educational System.

Part 5 deals with Estate Schools.

Part 6 contains general provisions.

Part 7 deals with finance.

Midwives.—The Midwives Ordinance (No. 2) is modelled on the Midwives Act of 1902, but does not go quite so far.

S. 2 provides that the Council of the Ceylon Medical College and one other person to be appointed by the Governor shall form a Board to be called the Ceylon Midwives Board with power to frame regulations (1) regulating the conditions of admission to the register of midwives;

(2) for supervising and restricting within due limits the practice of midwives.

S. 4 provides for a register of midwives being kept by the Registrar of the Ceylon Medical College.

S. 7 provides that no woman shall be entitled to recover any charges in any Court of Law for services rendered by her as midwife unless she is registered as such.

S. 8 empowers the Governor to prohibit unregistered women from practising as midwives in specified areas.

Firearms.—The Firearms Amendment Ordinance (No. 6). It has been found that there is difficulty under the Firearms Ordinance, 1916, in exempting articles which are technically guns but which if properly used do not fall within the intention of the Ordinance. An instance of this is the " Humane Killer " for slaughtering cattle. The amendment allows of such articles being exempted. It also makes it possible to grant special exemptions in the case of ordinary guns.

Peace.—The Treaty of Peace (Enforcement) Ordinance (No. 7) makes certain modifications in the Order in Council for the purpose of adapting its provisions to the circumstance of this Colony.

Local Governments.—The Local Government Ordinance (No. 11) follows the lines laid down in the report of the Local Government Commission.

The new bodies are vested with extensive powers over public thoroughfares, public health, public services, and general local wants and interests.

With a view to securing uniformity and efficiency of work s. 5 provides for the creation of a Local Government Board to supervise the numerous local authorities.

The general duties of the Board may be gathered from s. 6 of the Ordinance.

The Ordinance deals with local government in all except municipal areas.

The District Councils created by the Ordinance are of three kinds:

(1) Urban District Councils.
(2) General District Councils.
(3) Rural District Councils.

The areas brought within the administrative units of these several bodies correspond to the larger towns other than municipalities, to the smaller towns connected by business or association with the country around, and to the rural districts respectively.

In the areas of the Urban and District Councils two-thirds of the members are to be elected members (s. 11).

Part 4 sets out the powers and duties of the District Councils.

C. 1, ss. 43 and 45 specify the property to be vested in a District Council.

The powers of a District Council in regard to:

(1) Thoroughfares is set out in c. 2.
(2) Public Health in c. 3.
(3) Public Services in c. 4.

Part 4 deals with the power of the Councils to make by-laws.

Part 6 sets out the sources from which the incomes of the District Councils are to be derived.

Vehicles.—The Vehicles (Amendment) Ordinance (No. 13 of 1920). This Ordinance was introduced at the request of the Ceylon Society for

the prevention of cruelty to animals. It was found that animals are used for drawing vehicles which were not passed by the proper authority or which had become unfit for the purpose. The Ordinance introduces an amendment by which rules could be made for marking from time to time on the hoof or otherwise such animals as are to be used, and as are in the opinion of the proper authority fit, to draw vehicles, and for the obliteration of any such marks in the case of animals ceasing in the opinion of the proper authority, or of a convicting court, to be fit to draw vehicles.

Buffaloes.—The Buffaloes Protection Ordinance (No. 17), 1920. Buffaloes are largely used in the Island for agricultural purposes, and the object of the Ordinance is to restrict and if necessary prohibit the slaughter of buffaloes.

The Governor in Executive Council is empowered to make rules:

(*a*) Prohibiting the slaughter of buffaloes except on the permit of the local authority.

(*b*) Prohibiting the removal of buffaloes or the transport of buffalo meat from one area to another, except on the permit of the local authority.

6. THE STATE OF NORTH BORNEO.

[*Contributed by* C. F. C. Macaskie, Esq.]

During the year 1920 four Ordinances only were promulgated. Three of these Ordinances may be classified as war or post-war measures, namely:

The Passport Ordinance (Ord. 1 of 1920), which gives power to the Governor to make rules prohibiting any person from entering or leaving the State without a passport.

The War Emergency (Amendment) Ordinance (Ord. 2 of 1920), which enables the Governor to extend for a further period the powers conferred on him by the War Emergency Ordinance, 1917 (which Enactment ceased to have effect six months after the termination of the war), if the state of emergency therein contemplated shall still exist or shall appear likely to recur. This measure was rendered necessary by the serious rice shortage.

The Treaty of Peace Order Ordinance (Ord. 3 of 1920), which adopts the provisions of the Treaty of Peace Orders in Council, regulating the establishment of local Clearing Offices.

The fourth Ordinance of the year was:

The Machinery Ordinance (Ord. 4 of 1920), which provides for the appointment of inspectors of machinery and the examination of engineers and drivers. This Ordinance prohibits the working of machinery unless certified as fit and except by qualified persons. No child under sixteen years old may be employed on any service involving management of or attendance on or proximity to machinery in motion.

VII. WEST AFRICA.

1. GOLD COAST.

[*Contributed by* W. H. Wilkinson, Esq.]

During the year 1920 thirty-two Ordinances were passed by the Legislative Council, of which the following are those of more general interest:

Treaties of Peace.—The Treaty of Peace (Germany) Ordinance, 1920 (No. 2), defines and provides the requisite modifications under which the Treaty of Peace Order, 1919, shall apply to the Gold Coast Colony. The Royal Order in Council which deals with questions connected with enemy properties, contracts, debts, and the like, applies of its own force to this Colony; but it provides that in its application it shall be applied subject to such statutory modifications as the particular laws of the Colony may render necessary.

Motors.—The Motor Traffic Amendment Ordinance, 1920 (No. 12), amends s. 11 of the principal Ordinance by reintroducing the principle that before a person can obtain a driving licence he must pass a satisfactory test in motor driving. Under s. 7 of the Ordinance a reservation is made in favour of holders of driving licences issued under the existing law.

Customs.—The Customs Tariff Second Further Amendment Ordinance, 1920 (No. 13), was passed in order to remove the duty now chargeable on certain classes of necessary food-stuffs imported into the Colony, the result of which should be a reduction in the sale prices of these food-stuffs. The strain of increased prices which everyone has felt led to this measure being taken to alleviate, to some extent, that strain.

Imports and Exports.—The Imports and Exports Restriction Ordinance, 1920 (No. 15), is designedly of a temporary nature; and its purport is to empower the Governor to impose restrictions on the importation and exportation of animals and articles the importation or exportation of which the exigencies of the existing and anticipated post-war conditions render or may render dangerous or undesirable.

This Ordinance is intended to place on a regular footing the post-war exercise of the powers therein referred to which up to the present have or could have been exercised under the authority of emergency war measures.

Laws.—The Revised Edition of the Laws Ordinance, 1920 (No. 16), empowers the Attorney-General (the Hon. D. Kingdon) to compile a new and revised edition of the Gold Coast Laws, which has become necessary as there has been no new edition published now for over ten years. The Ordinance is in the usual form of such Ordinances and is in accordance with the most precedents. The last Ordinance of the Colony of similar purport was the Reprint of Statutes Ordinance, 1909 (No. 16 of 1909).

Post Office.—The Post Office (Charlatanic Uses) Ordinance, 1920 (No. 21), was passed in order to prevent the circulation of charlatanic advertisements and matter of a kind commonly met with in this Colony, and to provide for their detention and destruction by the postal authorities.

Such advertisements not infrequently induce natives to waste their money, and are also in some instances of a morally injurious nature, and it is for these reasons that it is thought desirable to repress such pernicious activities.

Census.—The Census Ordinance, 1920 (No. 3), was passed at the pleasure of His Majesty that a census of the British Empire be taken in the year 1921. It gives Government the powers necessary for taking the census in 1921.

Gratuities.—The West African Officers Compassionate Gratuity

Ordinance, 1920 (No. 25), was passed in order to systematize the policy of granting compassionate gratuities to the dependents of deceased native officials. Such gratuities have frequently been granted in the past, each case being judged on its merits, and the practice of granting them is an increasing one. The Ordinance formulates a scheme whereby a gratuity proportionate to his length of service and final salary should become payable to the dependents of a deceased native official on his death while still in the service.

Currency.—The Mixed Metal Currency Ordinance, 1920 (No. 26), extends the provisions of the Currency Offences Ordinance, 1918 (No. 39), as amended by the Currency Offences Amendment Ordinance, 1920 (No.7), to mixed metal currency, and was passed in order to safeguard the depreciation which has now been put into circulation.

Electricity Supply.—The Electricity Supply Ordinance, 1920 (No. 27), was passed in order to make provision for the supply by private enterprise of electricity for lighting and other purposes, and the general scheme of the Ordinance follows that of the Proprietary Railways Ordinance, 1907, though parts of it have been adapted from various English and other sources.

Spirituous Liquors. — The Second Spirituous Liquors Ordinance (No. 31) repeals and re-enacts the Spirituous Liquors Ordinance No. 5 of 1920, the main purport of which was to make provision for the better effectuation with respect to this Colony of the international African Liquor Traffic Convention of September 10, 1919.

(i) Ashanti.

During the year 1920 nineteen Ordinances were enacted with respect to Ashanti. Several of these were enacted for the purpose of applying to Ashanti various Ordinances of the Gold Coast Colony.

Probate and Administration.—The Probates (British and Colonial) Recognition Ordinance (No. 6) provides for the Recognition in Ashanti of Probate and Letters of Administration granted in the United Kingdom or in a British Possession or Protectorate or in a British Court in a foreign country.

Laws.—The Revised Edition of the Laws Ordinance, 1920 (No. 8). The general purport of this Ordinance is similar to that of the Gold Coast No. 16 of 1920.

Judicature.—The Judicature Amendment Ordinance, 1920 (No. 19), adds a proviso to s. 4 of the principal Ordinance to enable the Circuit Judge to deal with Divorce and Matrimonial Causes in Ashanti.

(ii) Northern Territories.

During the year 1920 twelve Ordinances were enacted with respect to the Protectorate. Several of these were enacted for the purpose of applying to the Protectorate various Ordinances of the Gold Coast.

Apart from these, Ordinance No. 5 of 1920, namely, the Revised Edition of the Laws of the Protectorate, seems to deserve mentioning, the purport of which is similar to that of the Ordinances of the Gold Coast Colony and of Ashanti, No. 16 of 1920 and No. 8 of 1920 respectively.

2. NIGERIA.

[*Contributed by* E. GARDINER SMITH, ESQ.]

Ordinances passed—29.

Surveyors.—The prohibition of surveyors from surveying property in which they are interested, introduced by No. 13 of 1918,[1] aroused a storm of protest, and was repealed in No. 1 (Survey Amendment).

Letter Writers.—The licensing of letter writers has been tried (No. 5 of 1910 of Southern Nigeria), and given up (No. 24 of 1915). Restrictions on their charges, on the other hand, after having been abolished (No. 24 of 1915), have been reintroduced (No. 3, Illiterates Protection (Amendment)).

Railways.—To deter native blacksmiths from drawing their supplies of iron from the railway line clauses have been borrowed from the law protecting telegraph lines (No. 60 of 1916, s. 17). Villages are made responsible for arresting offenders and reporting damage, under penalty of a collective fine. (No. 5, Railways.)

Shipping.—During the war the law was altered to enable coasting steamers to ply with only one certificated engineer on board.[2] This relaxation was abolished somewhat prematurely in 1917,[3] and had to be restored this year (No. 9—Shipping and Navigation (Amendment)) owing to the continued scarcity of engineers.

Mining.—To prevent the locking-up of valuable land by holders of exclusive prospecting licences, who could not or would not go to the expense of mining, but were able to exclude others, the Minerals Ordinance (No. 10 of 1916, s. 11 (3)) provided that a former licensee should not be granted a fresh licence for any part of his old area. This has been modified by allowing him to get a second licence after a year's interval. (No. 11, Minerals (Amendment.))

Customs Duties.—No. 12 (Customs (Amendment)) enables the Customs authorities to permit entries of dutiable exports to be passed after shipment.

Plague.—No. 13 (Quarantine (Amendment)) authorizes regulations to prevent the introduction of plague from any place, whether for the time being infected or not.

Currency.—The shortage of silver had forced Government to introduce an alloy coinage The opportunity was taken to codify the laws forbidding discounting, etc., of currency (Nos. 1 and 25 of 1919) [4] and to extend these to the new coinage. (No. 14, Currency Offences.)

Wills.—By s. 22 of No. 12 of 1915 (Land Registration) a will affecting Crown Land was declared to be void if it was not registered within twelve months of the death of the testator. This provision was derived from Proclamation No. 1 of 1912 of Northern Nigeria. In practice it was found that natives rarely if ever registered a will within the prescribed time. The result was a vast deal of involuntary intestacy of which the interested parties were blissfully ignorant. By No. 15 (Land Registration (Amendment)) wills were taken out of the Ordinance, and this was made retrospective to the date when the Ordinance came into operation.

[1] See *Journal* (June 1920), p. 149.
[2] No. 9 of 1916, *Review of Legislation*, 1918.
[3] No. 47 of 1917, *Review of Legislation*, 1919.
[4] See *Review of Legislation*, 1921.

3. SIERRA LEONE.

[*Contributed by* MICHAEL F. J. MCDONNELL, ESQ.]

1918.

Ordinances passed—19.

Prisoners' Removal.—No. 1 empowers the Governor by Order to remove a prisoner from any prison in the Colony to any prison in the Protectorate, but provides that prisoners who are not natives of the Protectorate shall on completion of their sentence be released in the Colony. The reason for this Enactment is to be found in the congested state of the prisons in the Colony.

Motor Traffic.—No. 4 is modelled on the Ordinance of Nigeria. S. 5 (5) saves the existing wheel taxes in force in the Colony.

Straying of Animals.—No. 5. The need for this arises from the same cause as has led to the passing of the last Ordinance. Until the advent of the internal combustion engine wheeled traffic other than an occasional rickshaw was unknown in this tsetse-ridden Colony.

S. 3 (3) is aimed at mitigating any hardship which might otherwise be felt to be imposed on owners of animals enjoying no private grazing facilities who, time out of mind, have made the highways their pastures.

By s. 5 power is conferred upon the Governor to extend the provisions of the Ordinance to the Protectorate.

Vaccination.—No. 11 serves to repeal and replace with amplifications an Ordinance of 1907.

Protectorate Administration.—No. 12 enables the Governor, if he so desires, to appoint a Commissioner to inquire with the assistance of one or more native assessors into the question of the deposition of a chief alleged to be unfit for his position, or the fining by the District Commissioner of a chief who has acted in a manner "subversive of the interests of good government."

Sherbro Administration.—No. 13 applies similar provisions to that part of the Colony which is administered as Protectorate.

Tribal Administration.—No. 14 enables the Governor to appoint a Commission of Inquiry to report in the event of a dispute as to the proper person to be the Headman or Ruler of a native tribe in Freetown.

House Tax.—No. 19. This Ordinance serves to consolidate and amend the law. Eight Ordinances are repealed by s. 25. The chief amendments serve to reduce the number of House Tax Districts, to entrust the assessment and collection of the tax to advisory boards in each District, and to provide for the sale of a defaulter's real property without the delay of two years which was necessary in the past, and to permit of the destruction of a house if it cannot be sold and is unfit for habitation.

1919.

Ordinances passed—9.

Domestic Animals.—No. 1 provides for the control of import of cats and dogs in view of the recent recrudescence of rabies in Europe.

Liquor Importation.—No. 3. This Ordinance absolutely prohibits the importation of trade spirits and imposes large restrictions on the import of other spirits.

Palm Kernels Export Duty.—No. 4 imposes an export duty of £2 a ton on all palm kernels—practically the sole article of native produce—exported from the Colony or Protectorate—subject to a preferential rebate of the whole duty in the event of the port of destination being a place in the British Dominions or a British Protectorate

Former Enemy Aliens.—No. 5 serves to control the entry into the Colony or Protectorate of the persons concerned on lines similar to those of s. 10 of the Aliens Restriction Amendment Act, 1919 (9 & 10 Geo. V., c. 92).

Detention of Musa Molloh, Ex-King of Fulladu.—No. 6 serves to provide for the control of a banished malefactor, from the neighbouring Colony of the Gambia, whose partiality for slavery called for suppression, and is similar in its provisions to those enacted in the case of many political prisoners in the past, notably in that of King Prempeh of Ashanti.

1920.

Ordinances passed—27.

Palm Kernels Export Duty.—No. 1. This serves merely to amend the bond to be given as a guarantee of export to British territory or a British Protectorate as prescribed in No. 4 of 1919.

Deportation of Aliens.—No. 2. Under this power is given to the Governor to make an order of expulsion from the Colony or Protectorate in respect of any person not of British nationality and to expel from the Colony any "native" as defined in the Protectorate Ordinance (No. 33 of 1901).

Magistrates' Courts.—No. 3 provides for the appointment when necessary of Assistant Magistrates.

Protectorate.—No. 4 empowers the Governor to divide the Protectorate, not as heretofore merely into Districts, but into Provinces, the components of which shall be several Districts.

Opium.—No. 5. The cultivation of hemp for purposes of consumption having been proved to exist in this Colony and Protectorate, this Ordinance was passed to put a stop to the practice.

Summary Conviction Offences.—No. 7. This enactment is based on s. 24 of the Metropolitan Police Courts Act, 1839, and throws upon a person found in possession of anything which may be reasonably suspected of being stolen the onus of giving an account of how he came by it.

Repatriation of Convicted Natives.—No. 10 enables natives convicted in the Colony to be returned to their homes in the Protectorate, where, under licence issued by a political officer, they are to report to a Paramount Chief at stated intervals. The *raison d'être* of this enactment arises from the fact that owing to the activity in the port of Freetown during the war, large numbers of Protectorate natives gravitated to the capital for employment as stevedores, coaling hands, and so forth. With the unemployment resulting from a reversion to normal conditions a measure of criminality has been developed among the lower orders calling for drastic action of the nature in question.

Export and Import Prohibition.—No. 12. By this the powers exercisable during the war, only under emergency legislation, such as the Colony and Protectorate Defence Orders of the King in Council, are permanently conferred upon the Governor in Council.

Spirituous Liquors.—No. 16. This Ordinance serves to repeal Ordinance No. 3 of 1919, to re-enact the absolute embargo on the import of trade spirits, but not to re-enact the limitation of the import of other less noxious spirits. For the rest, it serves to carry into effect the provisions of the Convention of Saint Germain-en-Laye.

Customs.—No. 18 serves to prohibit the import of seditious, defamatory, scandalous, or demoralizing printed matter in order to put a stop to the importation of certain literature on the colour question issued in the United States of America; it also controls in accordance with the Convention of Saint Germain-en-Laye the import of arms of war and gunpowder and further serves to prohibit the import of articles being colourable imitations of civil or military uniforms.

Public Motor Roads.—No. 22 is aimed at preventing encroachment on the motor roads which have in recent years been extensively made throughout the Protectorate.

Public Officers' Guarantee.—No. 26 repeals a former statute and replaces it with one more in conformity with that in operation in the neighbouring Colony of Nigeria.

United Brethren in Christ.—No. 27. The Missionary Society so named is a Foreign Corporation incorporated in the United States of America. This Ordinance has therefore been passed in order to dispel doubts as to the capacity of this body to acquire, hold, or dispose of real property in the Colony.

4. GAMBIA.

[It is hoped to publish the Summary of Legislation in the next Review.]

VIII. EAST AFRICA.

ZANZIBAR PROTECTORATE.

[*Contributed by* J. E. R. Stephens, Esq.]

Decrees passed—15.

The Treaty of Versailles.—By an Order in Council which may be cited as the Treaty of Peace Order, 1919, certain sections of the Treaty of Versailles—dealing generally with the collection of debts due to Allied Subjects from Enemy Subjects, Private Property, Rights, and Interests in an enemy country, Contracts, Judgments, and Prescriptions between enemies—are made applicable to all British Protectorates and provisions are made for carrying out the said sections of the Treaty; and by the same Order in Council power is conferred on the Legislatures of such Protectorates to make any modifications in the said provisions as may appear in the particular case to be necessary. Under this power the Treaty of Peace Decree and the Treaty of Peace (Amendment) Decree have been passed, which, except for very minor alterations, apply the Treaty of Peace Order *in extenso* to the Protectorate.

Estate Duty.—The Estate Duty (Amendment) Decree makes provision for claiming relief when too high a duty has been paid and repeals s. 15 of the Estate Duty Decree, 1919. Where the property of the

deceased has been assessed at too high a figure and in consequence too high a duty has been paid, the person accountable may, within six months of ascertaining the real value, produce to the Administrator-General the Probate or Letters of Administration accompanied by a particular inventory and valuation of the deceased's estate and verified by affidavit; the Administrator-General, if satisfied that too much duty has been paid, shall direct the Treasurer to refund the excess. Where the refund is refused the person accountable may within 30 days of being notified apply to the Court for an order compelling such refund.

Motor-cars.—The Urban and Rural Districts Regulation (Amendment) Decree requires all motor-cars and motor-cycles to be numbered when licensed and such number to be conspicuously displayed so as to be clearly visible from behind the car or cycle. The figures must be of a certain stated size and character.

Wakf Property.—This amends the Wakf Property Decree of 1916 by providing that any person who fails to comply with or who contravenes any rules or orders made by the Wakf Commissioners shall be liable to a fine not exceeding Rs. 1,000.

Customs.—The Customs (Amendment) Decree extends the list of non-dutiable goods by the addition of "Mbono seeds, postage stamps (whether used or unused), and stamped post cards not for use as stationery, and exposed cinematograph films for exhibition only." The Decree also gives further powers to the Chief of Customs to make rules for regulating and otherwise controlling the importing, exporting, and landing of goods and for general dock supervision.

The Customs (Amendment No. 2) Decree deals with damage or loss to goods on the Customs premises and insurance of the same.

S. 2 runs:

"No compensation shall be made by the Government to any person in respect of any loss or damage to any goods in the Customs premises (except as mentioned in s. 3 hereof) from any cause other than want of ordinary care on the part of the Government."

S. 3 provides:

"All goods declared in transit in accordance with the provisions of the principal Decree of any Rules or Regulations issued thereunder and duly received into the Transit Warehouses (other than kerosene oil, petrol, benzene or other motor spirit and any explosive or dangerous goods) will be insured against fire to the extent of the declared value thereof at the expense of the Government, and in the event of any such goods (except as aforesaid) being destroyed or damaged by fire the Government will pay to the owner thereof the amount recovered by them in respect of such insurance."

The Customs (Amendment No. 3) Decree which dealt with the duty on spirituous liquor has since been repealed.

Arms and Ammunition.—A Decree—cited as the Control of Arms and Ammunition Decree—deals with the importation, possession, and manufacture of, and trade in, arms and ammunition within the Protectorate.

The definition of arms is very comprehensive:

By s. 3 (*b*): "Arms" means artillery of all kinds, apparatus for the discharge of all kinds of projectiles, explosive or gas-diffusing, flame-throwers, bombs, grenades, machine-guns, rifles, and guns of all kinds,

pistols, and other weapons of a similar nature, and whether complete or in parts.

By s. 4 (*a*): "Ammunition" includes gunpowder, cartridges, balls, caps, and any other materials for loading arms, and all explosives. The importation, exportation, or transportation of arms or ammunition is hereby prohibited without a licence signed by the Chief of Customs.

By s. 7: The manufacture and assembling of arms or ammunition in the Protectorate is hereby prohibited.

By s. 8: Trade in arms or ammunition in the Protectorate is hereby placed under the control of the Chief of Customs.

By s. 9: No native vessel of less than 500 tons burden shall be allowed to ship, discharge, or tranship arms or ammunition without a special licence from the Chief of Customs.

By s. 10: No person in the Protectorate shall carry arms or ammunition without a licence signed by the Chief of Customs.

By s. 11: It shall be lawful for any magistrate, if satisfied by information on oath that any person is in unlawful possession of any arms or ammunition whether in a building, ship, or vehicle of any kind or not, to grant a warrant to enter at any time, and if need be by force, on Sundays as well as on other days, the place, ship, or vehicle named in such warrant, and every part thereof, and to examine the same, and to search for any arms or ammunition unlawfully kept therein, and to demand from the owner or occupier thereof the production of his licence or authority for being in possession of the same.

By s. 12: When the officer or other person executing such warrant has reasonable cause to believe that any arms or ammunition found by him in any place, ship, or vehicle are being kept, or dealt with in contravention of this Decree, he may seize and detain the same until a magistrate has decided whether they are liable to be forfeited or not.

By s. 17: Decree does not apply to arms and ammunition imported, exported, or transhipped by the Government or in custody of, or intended for, the Forces of His Majesty or any Police Force established under the Police Decree 1908 or any Corps formed under the Zanzibar Rifle Corps Decree 1907.

The British Resident may make rules for the carrying out of the Decree (s. 18). Rules were made hereunder October 4, 1920. *Inter alia*, it is ruled that:

No person shall without the written authority of the Chief of Customs transfer to another person either by gift or for any consideration any arms or ammunition which he is licensed to carry (rule 6).

No licence to carry arms or ammunition shall be issued to any person unless the Chief of Customs is satisfied that he is a fit and proper person to carry arms and ammunition and that such arms or ammunition are for the legitimate personal use of the bearer (rule 8).

No licence issued under these Rules shall be transferable (rule 12).

Any person who refuses or knowingly or wilfully fails to comply with or contravenes any of the provisions of this Decree is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding Rs. 1,000 (one thousand rupees), or to both, and the arms or ammunition are forfeited.

Treaties of Peace.—The Treaty of Peace (Austria) Decree and the Treaty of Peace (Bulgaria) Decree are passed with a view to adapting to the circumstances of the Protectorate the provisions of the Order

in Council styled The Treaty of Peace (Austria) Order in Council, 1920, and the Order in Council styled the Treaty of Peace (Bulgaria) Order in Council, 1920, which contain provisions respectively for enforcing the terms of the Treaties of Peace drawn up with those countries. With a few slight variations, the said Orders in Council are applied *in extenso*.

Stage Plays and Cinematograph Exhibitions.—Even in this distant part of the world the cinematograph has made its appearance and thereby necessitated the introduction of regulations for its supervision and control. The Stage Plays and Cinematograph Exhibitions Decree, 1920, however, is not limited to the cinematograph, but applies to any theatrical production of whatever nature. This appears from the definition of " Stage Play " which includes a lecture and also any tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, dialogue, prologue, epilogue, or other entertainment, or any part thereof.

" Cinematograph Exhibition " means any exhibition of pictures or other optical effects presented by means of a cinematograph or other similar apparatus. Before any production can be performed, a licence must be obtained. The licensing officer is a censor, and a copy of every stage play and of every alteration or addition to any stage play for which a licence has already been granted must be sent to him when the request for a licence is made (s. 4).

A descriptive title of every picture or series of pictures intended to be presented at any cinematograph exhibition shall be sent to the licensing officer with an account of the theatre where, and the time when, the exhibition is intended to be first presented.

The licensing officer may inspect or cause to be inspected any picture or pictures on the screen or otherwise before issuing a licence in respect thereof (s. 5).

A person who presents any stage play or cinematograph exhibition either without a licence or without everything having been done which may be required under any licence or under any rules made under the Decree to be done previous to such stage play or cinematograph exhibition taking place is liable to a fine not exceeding Rs. 300 (three hundred rupees) or to imprisonment for a term not exceeding three months, or to both (s. 11).

This Decree shall not apply to a performance of a stage play or cinematograph exhibition to which the public are not admitted either gratuitously or otherwise (s. 12).

By s. 13 the British Resident may make rules:

(*a*) Prescribing fees for any licence under this Decree.

(*b*) Prescribing conditions to be observed in reference to the erection, alteration, and equipment of any theatre.

(*c*) Prescribing conditions to be observed in reference to the safety from fire or otherwise of any theatre or for the safety and control of persons attending such theatre.

This power has been exercised and a body of rules drawn up which resemble closely the regulations of the Lord Chamberlain in England; they hardly need separate treatment.

The Liquor Licensing (Amendment) Decree, the Zanzibar Currency (Amendment) Decree, the Zanzibar Police (Amendment) Decree, deal with small details which do not call for comment.

IX. SOUTH ATLANTIC.

BRITISH GUIANA.

1919.

[*Contributed by* JOSEPH A. LUCKHOO, ESQ.]

From the summary hereunder it will appear that the outstanding feature of the 41 Ordinances passed by the Legislative Council of the Colony of British Guiana during the year 1919 is the Deeds Registry Ordinance, No. 17 of 1919, repealing the Registrar's Ordinance No. 6 of 1880, and also s. 3, subs. 4 (*c*) of the Civil Law of British Guiana Ordinance No. 15 of 1916, and the Registrar's Office (Stamps) Ordinance No. 7 of 1913.

The other Ordinances of the year 1919 hereunder referred to are also of interest.

Marriage.—The Marriage Ordinance 4 of 1919, to be construed with the Marriage Ordinance 25 of 1901 provides that any woman may hereafter marry her deceased husband's brother.

Non-ferrous Metal Industry.—The Non-Ferrous Metal Industry Ordinance 9 of 1919 restricts temporarily the persons who may engage in business connected with certain non-ferrous metals and metallic ores.

It describes the metals or ores to which the Ordinance applies.

It prohibits the dealing in certain metals and ores without licence.

It gives power to Governor in Council to require information and inspection of books and documents of licensees.

The duration of the Ordinance is for a period of five years.

Deeds Registry.—The Deeds Registry Ordinance 17 of 1919, which came into operation on January 1, 1921, is the most important Ordinance passed in the year 1919, regulating as it does the office of the Registrar and amending the law relating to the execution and registration of transports, mortgages, and other deeds, at the same time repealing the Registrar's Ordinance 6 of 1880, which for the past forty years regulated the office of the Registrar and comprised the law relating to the execution and registration of certain documents and deeds, and also repealing s. 3, subs. 4 (*c*) of the Civil Law of British Guiana Ordinance 15 of 1916 and the Registrar's Office (Stamps) Ordinance 7 of 1913.

It provides for the creation of a Deeds Registry, deals with the appointment of officers and the duties of each Sworn Clerk and Notary Public, and of an Assistant Sworn Clerk and staff generally.

It further provides that the Deeds Registry shall be under the charge of the Registrar, whose duties, subject to the special provisions of the Ordinance, and the rules framed thereunder or any other law shall be:

(*a*) To take charge of and preserve the Records of the Registrar of British Guiana as constituted by Ordinance No. 6 of 1880, including all the records of the Conveyancing Branch, but not the judicial records of the Supreme Court.

(*b*) To examine, certify, and register conveyances or transports and leases of immoveable property and of any other property the transfer of which may be required by the law of the Colony to be made under the provisions of this Ordinance, and to register declarations of title granted by the Court.

(*c*) To examine, certify, and register mortgage bonds hypothecating immoveable or other property as aforesaid, and any transfer or cancelment thereof.

(*d*) To examine and check and to satisfy himself as to the sufficiency of all titles tendered in support of any conveyance or transport, transfer, mortgage, lease, or any other transaction provided for in this Ordinance, to examine all descriptions of property being dealt with, which descriptions shall be definitely and clearly set out, especially with regard to locality, boundaries, area, and conditions or limitations attached thereto, and have reference, if the Court or Registrar shall so require, to a diagram or chart thereof on record in the Lands and Mines Department or in the Deeds Registry, and further to do all that may be necessary to obtain a full and complete identification of the property or of the rights therein which is or are the subject of the transaction.

(*e*) To register or record contracts, notarial bonds, notarial or other deeds, donations, security bonds, substitutions, renunciations, deliberations, inventories, powers of attorney, protests, leases, and cessions and assignments thereof, charts, and diagrams, and all other documents which the Registrar shall accept as proper for registration or record.

(*f*) On the consent of the parties concerned to cancel or partially cancel any registered bond, deed, or document other than a transport, lease, or mortgage, or to release from the operation of any such bond the whole or any part of the property or things thereby specially hypothecated or bound.

(*g*) To register or record cessions or assignments of any mortgage bond.

(*h*) To register, annotate, or record against any property registered in the Deeds Registry any lease, servitude, or incumbrance contained in any Crown title or in a transport or other duly recorded deed, or authorized by order of the Supreme Court.

(*i*) To make all such endorsements and annotations on any registered title or other deed or instrument filed as of record in the Deeds Registry as may be necessary to give the effect to registration thereof.

(*j*) To keep all such registers, including Land and Mortgage Registers, as may be requisite for the due performance by him of any of his duties aforesaid and the establishment of an efficient system of registration calculated to furnish security of title and an easy reference thereto.

(*k*) To keep a register of all Interdicts and Orders of Court served upon him and affecting the transfer of rights registered in the Deeds Registry.

(*l*) To make a weekly return to the Commissioner of Lands and Mines of all transports, mortgages, or leases passed under the provisions of this Ordinance of lands held under title from the Crown.

(*m*) Generally to exercise all such powers and discharge all such duties, including the drawing of any instrument or document aforementioned or any other document, as are by law and custom exercised by and required of and from the Registrar of British Guiana, and to permit the public upon payment of the prescribed fees to have such inspection of records and to obtain from the Deeds Registry such copies of and information concerning the same as is or may be allowed by law or rule or regulation thereunder.

It deals with the transfer and mortgage of immoveable property, execution of leases, partition of mortgaged property, hypothecation of

divided shares, registration of property acquired from deceased persons, of those mentally incapacitated, insolvents, and unrepresented absentees from the Colony.

It provides that a transport of immoveable property passed after the commencement of this Ordinance shall vest in the transferee the full and absolute title to the immoveable property or to the rights and interests therein described in the said transport subject to:

(*a*) All unpaid charges or liens imposed by the laws of the colony in favour of the Crown or Colony, all unpaid municipal or village taxes or rates imposed by or levied under any Ordinance, and any other liens or charges imposed by or in pursuance of or levied under any Ordinance.

(*b*) All registered encumbrances.

Provided that any transport obtained by fraud shall be liable in the hands of all parties or privies to such fraud to be declared void by the Supreme Court or any judge thereof.

Transports are now passed in favour of a purchaser instead of Letters of Decree which were formerly issued after a judicial sale of immoveable property.

British Guiana Constitution.—Ordinance 34 of 1919, s. 2, amends s. 7 of the British Guiana Constitution Ordinance 24 of 1909 (granting leave of absence to elected members) by adding thereto the following proviso:

"Provided always that it shall be lawful for the Governor, with the consent of the Combined Court, to grant leave of absence for any period or extended period beyond six months to any elected member of the Court of Policy who may in the opinion of the Combined Court be engaged beyond the Colony in any matter of public concern to the Colony."

Ordinance 34 of 1919, s. 3, amends s. 38 of the British Guiana Constitution Ordinance 1 of 1891 (granting leave of absence to Financial Representative) by adding thereto the following proviso:

"Provided always that it shall be lawful for the Governor with the consent of the Combined Court to grant leave of absence for any period or extended period beyond six months to any Financial Representative who may in the opinion of the Combined Court be engaged beyond the Colony in any matter of public concern to the Colony."

Wild Birds Protection.—The Wild Birds Protection Ordinance 31 of 1919 repeals the Wild Birds' Protection Ordinance 6 of 1877 and prevents the unnecessary destruction of certain wild birds. The Ordinance of 1877 was the only Ordinance dealing with wild birds in the statute-book of the Colony.

The new Ordinance provides for a close season and the penalty to be inflicted on persons wounding, capturing, or killing wild birds absolutely protected, and those protected during the close season.

1920.

Thirty-eight Ordinances were passed during the year 1920, and the following are the more important of those passed:

Produce.—The Produce Protection Ordinance, 1920 (No. 4), is enacted to protect produce growers from prædial and other thieves, by making it unlawful for anyone, except in certain cases, to buy or sell produce such as coco-nuts, cocoa, coffee, and rubber at any place other than a public market without first obtaining a licence.

Assistant to the Attorney-General.—The Assistant to the Attorney-General Ordinance, 1920 (No. 6), creates the office of Assistant to the Attorney-General and abolishes that of the Solicitor-General.

Bullion.—The Exportation of Bullion (Prohibition) Ordinance, 1920 (No. 7), empowers the Governor in Council to prohibit the exportation of bullion, which includes gold, silver, and other coins, and gold, silver, and other bullion.

Exports and Imports.—The Exportation and Importation (Prohibition) Ordinance, 1920 (No. 20), gives the Governor in Council power to prohibit the exportation from or the importation into the Colony of any article or thing whatsoever. The Ordinance remains in force until the expiration of three years from the date of the termination of the war.

Peace Treaties.—The Treaty of Peace Ordinance, 1920 (No. 14), the Treaty of Peace (Austria) Ordinance, 1920 (No. 36), and the Treaty of Peace (Bulgaria) Ordinance, 1920 (No. 37), provide for the establishment of local clearing offices, and make certain modifications to the Orders of His Majesty in Council entitled the Treaty of Peace Order, 1919, the Treaty of Peace (Austria) Order, 1920, and the Treaty of Peace (Bulgaria) Order, 1920, so as to adapt them to the circumstances of the Colony.

X. WEST INDIES.

1. THE BAHAMAS.

[*Contributed by the* HON. HARCOURT MALCOLM, O.B.E., K.C., *Speaker.*]

Acts passed—34.

Tariff.—The Tariff Amendment Act, 1920 (c. 1), reduces by 50 per cent, the import duties of customs on all dutiable imports except alcohol, ale, brandy, cider, cigarettes, cigars, cordials, gin, liqueurs, porter, rum, stout, tobacco, whisky, and wines.

War Tax Stamp.—The War Tax Stamp Act Repealing Act, 1920 (c. 2), repeals the War Tax Stamp Act, 1918.

Air Navigation.—The Air Navigation Act, 1920 (c. 3), gives the Governor in Council power by Order in Council, (1) to prohibit the navigation of aircraft over the colony and its territorial waters, (2) to prescribe areas for landing places for aircraft, and (3) generally to regulate air navigation over the colony and its territorial waters.

These powers include the licensing and registration of pilots and others, and of aircrafts and aerodromes. This Act is of one year's duration.

Collectors of Revenue.—The Revenue Consolidation Amendment Act, 1920 (c. 4), authorizes the appointment of collectors of revenue, under bond, at any port of entry in the colony at a salary not exceeding £15 a month. The appointments are subject to revocation at any time by the Governor in Council.

Attorney-General.—The Attorney-General's Act, 1920 (c. 5), increases the salary of the Attorney-General from £400 to £700 a year and deprives that officer of all private practice of any kind whatsoever. He is required to give his services gratuitously to all public boards, bodies,

or institutions approved by the Governor, or elected, and to all public officers in their official capacity.

Post Office.—The Post Office Amendment Act, 1920 (c. 6), provides additional powers for preventing the production of fictitious stamps.

Births and Deaths.—The Births and Deaths Registration Amendment Act, 1920 (c. 7), restricts the application of the Births and Deaths Registration Act, 1913, to the island of New Providence. Its provisions can, however, be extended to any out-island by Order in Council.

Civil Engineer.—The Civil Engineer's Assistant Act, 1920 (c. 8), provides for an assistant to the Civil Engineer. The primary duty of this assistant is in relation to out-island works and colonial lighthouses. The Act supplies an annual salary not exceeding £350 and is limited to five years.

Cave Earth and Guano.—The Cave Earth and Guano Exportation Prohibition Act, 1920 (c. 9), prohibits the export of these articles under penalty of their forfeiture and of a fine of £100 and imprisonment for six months.

Public Service Examination.—The Public Service Examinations Repealing Act, 1920 (c. 10), repeals all Acts which provided examination tests for entry into the public service.

Debenture Redemption.—The Debenture Act, 1920 (c. 11), authorizes the repayment, before maturity, of debentures issued under the Debenture Act, 1888, the Telegraph Act, 1891, and the Debenture Act, 1893.

Auditor of Public Accounts.—The Auditor of Public Accounts Act, 1920 (c. 12), increases the salary of the present holder of this office to £400. This Act was repealed by c. 34.

Harbour Island Medical Officer.—The Harbour Island Medical Officer Act, 1920 (c. 13), increases the salary of the present holder of this office to £200. This Act was repealed by c. 34.

Expiring Laws.—The Expiring Laws Continuance Act, 1920 (c. 14), continues fifteen Acts in force for four years and two Acts for one year.

Canada-West Indies Trade Agreement.—The Canada-West Indies Trade Agreement Act, 1920 (c. 15), ratifies the Trade Agreement entered into at Ottawa on June 18, 1920. The Act supplies statutory authority for the preference of 25 per cent. of duties of Customs accorded to the signatories of the Agreement and for the payment of a steamship subsidy not exceeding £3,000 a year. The preference does not apply to wines, malt liquors, spirits, spirituous liquors, liquid medicines, and articles containing alcohol, tobacco, cigars, and cigarettes.

Land Roll.—The Land Roll Act, 1920 (c. 16), supplies the machinery for the compilation of a Land Roll.

Immigration.—The Immigrants Act, 1920 (c. 17), deals with this difficult subject along the lines adopted in Grenada (1919), Bermuda (1920), and British Honduras. It prohibits the immigration of felons and misdemeanants and authorizes the deportation of undesirable immigrants. Masters of ships are penalized for landing undesirable immigrants and are obliged to carry such immigrants away again.

Corruption.—The Prevention of Corruption Act, 1920 (c. 18), provides substantial penalties (two years' imprisonment and £500 fine) for corrupt transactions of and with agents. The preliminary consent of the Attorney-General is essential to the institution of a prosecution.

Spirits and Beer Manufacture.—The Spirits and Beer Manufacture

Act, 1920 (c. 19), controls and regulates the distillation of spirits and the brewing of beer. A licence costs £500 and continues in force for five years. A licensee must give a bond annually securing the payment of duty on all spirits or beer manufactured. The amount of this duty is four-fifths of that imposed on imported spirits and beer. Notice of application for the licence must be published and the grant can be opposed.

Tariff.—The Tariff Amendment (No. 2) Act, 1920 (c. 20), entitles an exporter of imported spirits to a rebate of 80 per cent. of the import duty if and when he supplies proof of legal landing out of the colony or loss through act of God and the importation of spirits the duty whereon is equivalent in amount to that on those exported.

The Tariff Amendment (No. 3) Act, 1920 (c. 21), exempts from import duty vessels, lighters, or other crafts, whether registered or not, brought into the colony for the exclusive purpose of and used exclusively in lightering the imports and exports of the colony.

Importation of British Currency Notes Prohibition.—The Importation of British Currency Notes Prohibition Repealing Act, 1920 (c. 22), repeals the Act of 1919 which prohibited the importation of such notes.

Government Paper Currency.—The Currency Note Amendment Act, 1920 (c. 23), increases the amount of the Government Paper Currency Note issue from £10,000 to £40,000.

Fishing Nets Prohibition.—The Catching of Fish by Nets Prohibition Act, 1920 (c. 24), prohibits the use of nets in fishing within a specified area near New Providence.

Assistant Commandant of Police.—The Assistant Commandant's Act, 1920 (c. 25), creates the office of Assistant Commandant of Police with an annual salary of £350.

Constables.—The Constables Amendment Act, 1920 (c. 26), provides a higher rate of pay and allowances for local constables.

Martin Alexander Poitier's Salary.—The Poitier Increase of Salary Act, 1920 (c. 27), increases the salary of Martin Alexander Poitier.

Public Health.—The Public Health Amendment Act, 1920 (c. 28), provides a new definition of notifiable infectious diseases as follows: Plague, smallpox, yellow fever, cholera, diphtheria, typhoid fever, scarlet fever, scarlatina, mumps, measles, German measles, typhus fever, whooping cough, hydrophobia, trachoma, puerperal fever, relapsing fever, dysentery, cerebrospinal fever, acute poliomyelitis, influenza, and pneumonia.

Venereal Diseases Act, 1920 (c. 29), is an attempt to grapple with this scourge by (1) restrictions on landing of 2nd- and 3rd-class passengers; (2) prohibiting treatment except by medical practitioners; (3) restricting advertisements; and (4) obliging sufferers to obtain medical treatment.

Bimini Medical Officer.—The Bimini Medical Officer's Salary Act, 1920 (c. 30), provides a salary of £200 for the medical officer at Bimini.

Police.—The Police Amendment Act, 1920 (c. 31), precludes the Commandant and Sergeant-Major from the benefits of the Public Officers Increase of Salary Act, 1919, and provides new rates of pay and rewards for constables.

Out-islands Appropriation.—The Out-islands Improvement Act, 1920 (c. 32), appropriates £9,500 for special work at the out-islands.

Appropriation.—The Appropriation Act, 1920 (c. 33), appropriates £224,893 for public works and other services.

Public Establishment.—The Public Establishments Act, 1920 (c. 34), is the first attempt since 1889 to consolidate the law relating to the civil and judicial establishments of the colony. There is an increase of all salaries.

2. JAMAICA.

[*Contributed by* F. C. Wells Durrant, Esq., *Attorney-General.*]

Laws passed—53.

Income-tax.—Two laws were passed to amend the Income-tax Law of 1919, Laws 39 and 50. Law 39 makes provision that any person who satisfies the Assessment Committee that he is not domiciled in the island, or that, being a British subject, he is not ordinarily resident in the island, shall in respect of income derivable from sources out of this island be chargeable with income-tax on such income only as is received in the island. It also amends the 1919 law by making provision for relief because of wife or children. It further enacts that the assessment of income-tax on insurance companies other than life assurance companies carrying on business in the island is to be based on the actual net profits including interest as arrived at from the accounts of such companies and also settles the basis of assessment in the case of life assurance companies.

Law 50 further amends the law relating to income-tax payable by assurance companies.

Banking.—Law 28 regulates the carrying on of banking business in the colony by aliens and is in conformity with the legislation on the same lines recently enacted in other colonies.

Aliens.—Law 42 provides for the expulsion of undesirable aliens.

Property Tax.—Law 43 makes further amendments in the Property Tax Laws and makes provision for the imposition of a super-tax.

The principal subjects dealt with by the other laws are:

1. Secondary Education.
2. Pilotage.
3. The Acquisition of Land for Public Purposes.

3. WINDWARD ISLANDS.

(i) ST. VINCENT.

[*Contributed by* L. C. Levy, Esq.]

Ordinances passed—29.

Appeal.—The West Indian Court of Appeal (Local Provisions) Ordinance (No. 16 of 1920) makes the necessary provisions for the hearing of appeals from the Supreme Court of the Colony by the Court of Appeal established under the West Indian Court of Appeal Act, 1919 (Imperial). Appeal lies to the Court from any final judgment of the Supreme Court or of the Chief Justice. In criminal matters the Chief Justice may reserve questions of law for the consideration of the Court. The right of appeal to the King in Council is not prejudiced.

Banks.—The Alien Banks Ordinance (No. 7 of 1920) prohibits the carrying on of banking business by an alien except under licence from the Governor and subject to conditions therein specified. The penalty for contravention is £50 and in the case of a continuing offence £5 per day. The expression "alien" is defined to include (*a*) any individual not a British subject, (*b*) any firm, partnership, or incorporated body of persons of which any member is not a British subject, (*c*) any body corporate not incorporated in any part of His Majesty's dominions. The Foreign Banks Ordinance (No. 24 of 1919) is repealed.

Firearms.—The Firearms Ordinance (No. 15 of 1920) prohibits the possession or use of firearms or ammunition except under licence, and except in the case of persons authorized to carry the same by virtue of their employment. The penalty on contravention is £50. The Court may order forfeiture of firearms found in the possession of intoxicated persons, lunatics, and violent criminals. The Governor in Council may prohibit the carrying of firearms in any district or may demand delivery of all firearms in such district.

Peace.—The Treaty of Peace Ordinance (No. 2 of 1920), passed in pursuance of the Order in Council made by His Majesty's Council under the Treaty of Peace Act, 1919 (Imperial), which Order applies to the colony, gives power to the Governor to establish such offices and make such appointments as may be necessary for carrying out the Treaty.

Profiteering.—The Profiteering Ordinance (No. 5 of 1920) provides measures to check profiteering. Power is given to the Governor in Council to prescribe the maximum wholesale and retail prices of articles in common use. The power may be delegated to Committees appointed by the Governor. The penalty for selling above the maximum price is £100 or three months' imprisonment with or without hard labour, or both fine and imprisonment. The Ordinance ceased to have effect on December 31, 1920.

Revenue and Taxation.—The Customs Duties Ordinance (No. 29 of 1920) gives a preference to goods produced in and consigned from any part of the British Empire provided the same are accompanied by a certificate of origin. The respective tariffs are set out in the first schedule under the headings "British Preferential Tariff" and "General Tariff." Owing to a misconception the schedule did not give effect to a preference of 33⅓ per cent. on British goods as was intended, and this was shortly after rectified by Ordinance No. 1 of 1921.

The Trade Duty Ordinance (No. 11 of 1920) imposes in addition to the ordinary Customs and Excise duties a trade duty of 2*s.* per gallon on wines, malt liquors, and spirits (except perfumed spirits, bay rum, and methylated spirit) imported or purchased from a local distillery or taken out of bond.

Sedition.—The Seditious Publications Ordinance (No. 19 of 1920) makes it an indictable offence to utter any words with seditious intention or to publish, import, distribute or possess any seditious publication. The penalty for contravention is £1,000 or 2 years' imprisonment with or without hard labour, or both fine and imprisonment. The Governor may by Order in Council prohibit the importation of seditious publications. The Court may suspend newspapers containing seditious matter and may prohibit the circulation of any seditious publications. No prosecution to be instituted without fiat of Attorney-General.

Sugar (Local Consumption of).—The Sugar (Local Consumption)

Ordinance (No. 13 of 1920) requires the manufacturers of syrup or molasses to manufacture sugar for local consumption in such proportion to the output or manufacture of syrup or molasses as may be fixed by the Governor in Council. The penalty for contravention is £100 or six months' imprisonment. No action to lie against manufacturer for breach of contract resulting from Ordinance.

Usury.—The Money-lending Ordinance (No. 14 of 1920) prohibits the charging of interest on loans at a rate exceeding 12½ per cent. per annum. The penalty on summary conviction is £100 or six months' imprisonment, or both fine and imprisonment. Power is given to the Court to reopen transactions and give relief to debtors.

Venereal Diseases.—The Venereal Diseases Ordinance (No. 26 of 1920) makes it obligatory on persons suffering from venereal disease to consult a medical practitioner. The penalty for contravention on summary conviction is £10. Persons other than medical practitioners are prohibited from treating venereal diseases under a penalty of £50. Parents and guardians of children suffering from venereal disease are required to cause such children to be treated.

The Ordinance is to come into operation on such day as the Governor may appoint by Proclamation.

Other Ordinances are:

The Kingstown Board Ordinance, 1897, Amendment Ordinance (No. 3 of 1920), gives power to the Town Board to make regulations with respect to buildings and premises on which machinery is worked and to regulate the structure of chimneys used in connection therewith.

The Schools Latrine Ordinance (No. 4 of 1920) requires all schools to be provided with latrines.

The Stamp Duties (Amendment) Ordinance (No. 17 of 1920) imposes an increased rate of duty on conveyance of real property on a graduated scale according to the rate per acre at which the property is sold.

The Income (Arrowroot Tax) Ordinance (No. 25 of 1920) provides that arrowroot manufactured in 1919 and held in stock unsold to December 31, 1919, shall be deemed for purposes of assessment under the Income Tax Ordinance, 1919, to have a value of £2 5*s.* per barrel.

The Customs (Exportation Prohibition) Ordinance (No. 12 of 1920) gives power to the Governor in Council to prohibit the export of any article either generally or to a specified place.

(ii) SAINT LUCIA.

[*Contributed by the* Hon. J. E. M. Salmon.]

Ordinances passed—27.

Appeals.—The Imperial West Indian Court of Appeal Act, 9 & 10 Geo. V., c. 47, establishes a West Indian Court of Appeal for certain colonies, including St. Lucia, and necessitated the passing of Ordinance No. 6, St. Lucia Court of Appeal (Local Provisions), which regulates the right to appeal from final decisions of the Royal Court and provides for the hearing of Crown Cases reserved. The new Court of Appeal, so far as St. Lucia is concerned, replaces the Windward Islands Court of Appeal. S. 2 of No. 6, which relates to the powers of the Chief Justice of St. Lucia as to incidental matters in pending appeals, was repealed by No. 25 of 1920.

Commerce.—Profiteering, No. 1, makes provision for the maximum retail prices at which controlled articles may be sold. It is only a temporary measure.

No. 23, Sugar (Local Consumption), provides for the control by the Local Government of sugar which is to be consumed locally. It gives power to local manufacturers of sugar to keep and sell in the Colony such quantity of sugar as may be considered necessary for local consumption. It also provides against hoarding and gives power to fix the maximum price of sale.

Criminal Law and Procedure.—The Criminal Code, which is a code of offences and procedure, continues the revision of the laws of the Colony, the previous volumes being the Commercial Code, 1916, the Revised Ordinances, 1916 (in two volumes), and the Revised Rules and Orders, 1916, and published in 1917.

The code supersedes the Criminal and Criminal Procedure Codes (Nos. 101 and 102) of the 1889 edition and the Ordinances amending these, including the Criminal Law and Procedure Ordinance, No. 25 of 1918, the provisions of which are to have effect, however, in so far only as incorporated in the Code.

The arrangement and scheme of the Code have already been described in the *Journal*.[1]

No. 18, Code of Criminal Procedure (Jurors' Fees) Amendment, increased jurors' fees owing to the increased cost of living.

No. 12, Seditious Publications, makes provision for the punishment of seditious acts and libel and empowers the Government to prohibit the importation, publication, or circulation of seditious publications and to suspend the publication of a newspaper in certain cases.

Currency.—No. 24, Bank Notes, regulates the issue of bank notes by bankers. A licence by the Governor-in-Council is necessary and the minimum value of a note is to be £1. The Ordinance also contains provisions as to reserve funds, inspection, securities, and accounts and returns.

No. 15, Paper Currency, is a temporary measure due to the shortage of silver in the Colony.

Loans.—No. 7, Local Loan, provides primarily for a coastal motor steamer service and subsidiarily, if there was any balance for the purpose, for a road motor service in connection with the coastal motor boat service.

Revenue.—The Customs Ordinance, No. 109, 1916 Revision, was amended by No. 2 of 1920, which provides for the prohibition of exports or imports by the Governor in Council, and by No. 22, which provides for drawbacks or the repayment of duties.

No. 16, Customs Duties, is a new Ordinance replacing Nos. 110 of 1916 Revision, 9 of 1917, 13 of 1919, and 3 of 1920.

No. 17, Export Duties Amendment, repeals No. 12 of 1919, and amends No. 113 of 1916 Revision, by replacing the schedule of duties.

Treaty of Peace.—No. 4, Treaty of Peace, makes provision for a local clearing office and controller. This Ordinance is to be construed by reference to the Imperial Treaty of Peace Order, 1919, and was amended by No. 19, which repeals s. 6 of No. 4.

Other Ordinances.—No. 14, Bank Holidays Amendment, amends No. 100 of 1916 Revision and provides a new schedule of holidays.

[1] See *Journal*, 3rd Ser., vol. iii, p. 325.

No. 11, Castries Town Board (Pensions), authorizes the pensioning of the Town Clerk of Castries as well as of other officers of the Board.

No. 27, Census, provides for the taking of a Census on April 24, 1921, in common with other parts of the Empire.

No. 21, Friendly Societies Amendment, amends No. 37 of 1916 Revision, providing for the auditing of the accounts of Friendly Societies by public auditors.

No. 13, Public Health Amendment, amends No. 83 of 1916 Revision and provides for housing areas and sanitation.

No. 8, Rural House Tax Amendment, No. 9, Castries Town Board Amendment, and No. 10, Towns and Villages Amendment, replace certain provisions of the principal Ordinance by new provisions as to the seizure and sale of moveable and immoveable property for delinquent taxes.

No. 26, Stowaways, provides for the prosecution and punishment of stowaways from the Colony.

4. TRINIDAD AND TOBAGO.

[*Contributed by the* HON. THE ATTORNEY-GENERAL.]

Ordinances passed—57.

The following are the more important Ordinances of interest outside the Colony:

Appeal.—The West Indian Court of Appeal (local jurisdiction) Ordinance (No. 18) and the West Indian Court of Appeal (Amendment) Ordinance (No. 47) provide the necessary local legislation in connexion with the West Indian Court of Appeal established by the West Indian Court of Appeal Act, 9 and 10 Geo V., c. 47, for the Colonies of Trinidad, British Guiana, Barbados, the Leeward Islands, Grenada, St. Lucia, and St. Vincent. Nothing in this legislation prejudices or affects the right of any person to appeal to His Majesty in Council.

Agriculture.—The Agricultural College (Produce Tax) Ordinance (No. 57) imposes a tax on agricultural produce during the year 1921 for the purpose of raising a sum of £25,000 towards the cost of establishing an agricultural college in Trinidad for the use of the West Indies.

Bills of Exchange.—The Bills of Exchange Ordinance (No. 33) brings the law of the colony into line with the law of the United Kingdom by allowing a dishonoured bill of exchange to be noted either on the day of its dishonour or on the next succeeding business day, also by making the measure of damages where a bill is dishonoured abroad "the amount of the re-exchange with interest thereon until the time of payment." The "amount of re-exchange" is the amount required to purchase a similar bill on the day on which the original bill was dishonoured, plus expenses.

Boy Scouts.—The Boy Scouts Association Ordinance (No. 22) gives official recognition and protection to the Boy Scout movement in the colony.

Customs.—The colony having become a party to the Canada–West Indies Trade Agreement, the Customs Duties Ordinance (No. 40) was passed to give effect to that Agreement.

Deportation.—The Returned Deportees (Punishment) Ordinance

(No. 29) supplies an omission in the existing law of power to punish a person deported under the Aliens Ordinance of 1912 or the Royal Order in Council dated October 26, 1896, who returns to the colony without lawful authority.

Exportation of Goods.—The Exportation of Goods (Prohibition) Ordinance (No. 21) gives effect to a circular dispatch from the Secretary of State for the Colonies to West India Governors advising that although restrictions on exports necessary during the war had been relaxed he considered it desirable that power should be retained to prohibit the exportation of any article for a period of three years from the termination of the war.

Loan.—The Local Loan Ordinance (No. 15) provides for the raising locally of a loan of £1,000,000 sterling for the purpose of the development of the resources of the colony by public works, and the loan has been successfully issued by the financial officers of the colony's Government.

Oil Industry.—The Companies (Foreign Interests) Ordinance (No. 2) makes it impossible for a company which has obtained the Governor's consent to the acquisition of oil-bearing lands to evade the provisions excluding foreign interests by altering their articles of association under the Companies Ordinance of 1913 without the consent of the Governor. The Ordinance follows in substance the provisions of the Companies (Foreign Interests) Act, 1917.

The Oil Pollution and Water Conservation Ordinance (No. 46) has been passed to control the pollution of land or water by oil-mining operations and the abstraction of water from watercourses. Such matters are controlled by a Board of which a judge of the Supreme Court is chairman and he alone decides points of law. There is an appeal to a full Court of the Supreme Court of the Colony, and the Board operates by means of public inquiry.

Rent Restriction.—The Increase of Rent Ordinance (No. 44) was passed to curb profiteering in this direction, and prohibits any increase over 25 per cent. in the rent of a dwelling-house to which the bill applies, without the sanction of a magistrate. It is retrospective as to increases of rent since June 30, 1919, and is to remain in force for a period of three years.

Solicitors.—The Solicitors Ordinance (No. 34) reduces the period of service of an articled clerk before admission as a solicitor to four years where the clerk has passed the examination for higher certificates of the Oxford and Cambridge Schools Examination Board.

Sedition.—The Sedition Ordinance (No. 10) declares and extends the law as to the punishment for the publication of seditious acts and libels, and provides a definition of sedition. Power is taken to prohibit the importation of seditious publications.

Shop Hours.—The Shop Hours Ordinance (No. 45) provides that the Governor in Executive Council may make " shop hours orders " fixing the " hours " during which shops in which retail trade or business is carried on may be open for serving customers. A " shop hours order " may be made applicable to all shops or to shops of any specified class.

XI. MEDITERRANEAN COLONIES.

1. GIBRALTAR.

[*Contributed by* Capt. Maxwell Anderson, C.B.E., K.C., R.N. (ret.), *Attorney-General.*]

Fifteen Ordinances were enacted during the year 1920. Of these three (Nos. 6, 14, and 15) were necessitated by the Treaty of Peace and provided for the establishment of a local clearing and administrating office.

Revenue.—Two (Nos. 8 and 12) were Revenue Ordinances. No. 8 imposed an export tax of 1*s.* 6*d.* per ton on fuel oil, while No. 12 provided for the raising of the fees on passport *visas* and for raising the charges for the services of Health Guards placed on vessels in quarantine. A small fee was also imposed for customs certificates issued by the Collector of Revenue. Ordinance No. 13 removed the scale of fees for the above-mentioned Health Guards from the Quarantine Order in Council and left these fees as all other fees and charges to be raised under the Revenue Ordinance.

Motors.—The important legislation of the year is contained in two Ordinances, Nos. 9 and 10. No. 9 repealed the old Ordinance regarding motor-cars, which Ordinance had been found to be unsuitable in view of the rapid increase in the number of motor-vehicles. The new Ordinance is on the same lines as the Imperial legislation and provides for the same offences while also incorporating provisions for the issue of international travelling passes.

Rent.—Ordinance No. 10 is the Increase of Rent (Restriction) Ordinance drafted on the lines of similar legislation in England. The Ordinance is to be in force for four years unless previously repealed. It has proved effective in operation and has undoubtedly been beneficial to the poorer classes of the community.

Legislation of minor importance is to be found in five Ordinances. No. 2 prevents the import except under licence of the derivatives of coal tar and dyes, while No. 7 continues the Prohibition on Exports for a further three years after the termination of the war. Ordinance No. 3 amends the Justices Ordinance and makes simpler the provisions by which poor persons can obtain the attendance of witnesses before a Court of summary jurisdiction. Ordinance No. 4 is an amendment to the Titles to Lands Consolidation Order in Council and is enacted to obviate the necessity of private Ordinances when a title has not been registered within due time. Such deeds may now be registered on such terms as the Chief Justice deems fit provided that the Attorney-General is made a party to the application. Ordinance No. 5 is an amendment to the Hackney Carriage Ordinance and is of purely local interest, as also is Ordinance No. 1, which provides a new title to the Garrison Library heretofore held under certain Letters Patent of 1820.

Ordinance No. 11 is the Merchant Shipping (Wireless Telegraphy) Ordinance applying Imperial legislation to local shipping.

2. CYPRUS.

[*Contributed by* MR. JUSTICE STUART.]

1919.

Laws passed—28.

Nos. 1, 2, 3, and 4 are ordinary financial appropriation laws.

No. 5 amends the Cyprian Mining Company, Limited (Property Disposal), Law (No. 14 of 1917).

No. 6 amends the Foreign Imprisonment (Expenses) Law (3 of 1890).

No. 7 amends the law for preventing the spreading of contagious diseases among animals (No. 4 of 1880, s. 13).

Judicature.—No. 8 enables a Magisterial Court to reserve a question of law for consideration by the Supreme Court and enables the latter Court then to dispose finally of the case or to return it to the Magistrate.

Ecclesiastical Property.—No. 9 is a mere continuation law *re* ecclesiastical property.

Copyright.—No. 10 is a copyright enactment consequent upon, and to be read with, 1 and 2 Geo. V., c. 46 (Copyright Act, 1911). It adapts s. 14 of the Imperial Act of Cyprus, and provides penalties for certain forms of infringement of copyright.

Indemnity.—No. 11 is a law of indemnity, and restrains all legal proceedings against the High Commissioner or any person acting under any orders, general or special, given by the High Commissioner for any acts commanded, advised, or done in good faith for the maintenance of good order and for the public safety, and for penalties imposed on breach of such orders by Military (including Provost Marshals') Courts from August 5, 1914, to such date as by Order in Council the High Commissioner may declare "for the purposes of the law" to be the "date of the determination of the present war."

Provisional Powers.—No. 12 gives certain provisional powers for a period of two years after "the date of the determination of the present war" (date to be determined by the High Commissioner in Council) to regulate:

(*a*) Commercial intercourse with any person, etc., subject of an enemy State at the termination of the war;

(*b*) Prices "at which animals or things may be sold"; and

(*c*) To requisition on payment by assessment of the value or hire any animals or things for military purposes. Further to regulate or prohibit for a period of three years after such date the exportation or importation of animals as things and to deal with coinage and currency notes and their issue.

Excavations.—No. 13 provides for the filling up of dangerous excavations, etc.

Non-ferrous Metals.—No. 14 enacts that during the "continuance of the present war and for the period of five years after" its termination no one shall engage in any business connected with certain non-ferrous metals and metallic ores without a licence. Certain conditions are also declared, if found existing, to preclude (unless the High Commissioner should otherwise deem expedient) the grant of a licence to certain persons, etc.

No. 15 is of mere private concern.

Savings Bank.—No. 16 is a continuance law to enable a savings bank to sue or to be sued.

Agriculture.—Nos. 17, 18, 19, and 20 are a series of measures in aid of the agricultural classes.

No. 17 seeks to restrain usury by enacting that interest on a loan to a farmer shall not exceed 12 per cent., and the Courts are given power to inquire into the real facts of a loan and any payments made to discharge interest or principal and the nature of any "gifts" or collateral transactions between a farmer debtor and his creditor.

No. 18 provides for the exact keeping of day-books by traders of all accounts with farmers, the rendering of quarterly accounts, the reduction to writing of all accounts stated between traders and farmers, and requires that loans should contain a statement of the consideration for which they are given and mortgage deeds should disclose the origin of the debt secured thus in such a way as to enable particulars to be traced in a trader's account books. Powers are given to a Court to inquire into all matters connected with a debt and with any collateral matters which may form a basis for relief or partial relief.

No. 19 provides that on execution of a writ of sale there shall be exempted from sale so much land as may be necessary for the support of the debtor farmer and his family (exemption of necessary house accommodation is provided for by previous legislation). [These exemptions, however, do not apply where a sale is the result of a judgment for foreclosure of a mortgage.]

No. 20 enables, under certain circumstances, a Court to declare a farmer insolvent, the estate then devolving on the Magistrates of the Court (as Juge Commissaire, or Syndic), with powers to inquire into the real indebtedness of the farmer. Provision is also made for the discharge, conditional or otherwise, of the farmer from bankruptcy.

Oil.—No. 21 empowers a licensee, to mine and win oil, to lay a conduit-pipe for oil under certain conditions through the lands of strangers.

Water-supply.—No. 22 deals with the water-supply of Nicosia and creates a Water Commission.

Customs.—No. 23 makes certain minor changes in customs dues for blasting compounds.

Alien Enemies.—Nos. 24 and 28 are consequent on the war; the former makes it unlawful, without express permission in writing from the Chief Secretary of the Government of Cyprus, for any former alien enemy (i.e. "any citizen or subject of a State with which His Majesty was at war at any time during 1918") to enter or remain in Cyprus, and the latter enables an order of deportation to be made requiring any such former alien enemy already in the island to leave it and remain outside.

Motors.—No. 27 provides for the registration and licensing of motor-cars, etc., and imposition of fees according to tare.

1920.

Laws passed—29.

Nos. 8, 9, 20, and 21 are ordinary financial appropriation laws.

Peace Treaty.—Nos. 1, 16, 26, 28, and 29 are consequent upon the various Treaty of Peace Orders (1919, 1920 *re* Austria and 1920 *re* Bulgaria) promulgated by His Majesty in Council, and provide for the

establishment of Clearing Offices and a Controller (in the case of Bulgaria an Administrator) to ascertain and settle claims, etc., in respect of property vested during the war in the Custodian of Enemy Property.

Provisional Powers.—Nos. 2 and 18 amend the Provisional Powers Law of 1919 by (*a*) the former legalizing the custody of enemy property by a Public Custodian during the war and for a period of two years subsequent to the date of the termination of the "present war," and (*b*) the latter enlarging the scope of Government powers to requisition animals by deleting a limitation for "military purposes."

Public Officers.—No. 3 makes the retirement at the age of sixty of public officers compulsory, unless with their own consent such public officers are expressly continued. If continued, the continuance is apparently without definite limit.

Patents.—No. 4 provides that letters patent for an invention may be granted to any person holding in "England" a valid patent or to an assignee of such person: except in regard to "passing off" actions, the Supreme Court determines claims on appeal from the Registrar of Patents, who keeps a Registry of patents.

Ecclesiastical Property.—No. 5 is a mere continuing law to postpone legislation on the thorny subject of ecclesiastical property.

Criminal Law.—Nos 6, 12, and 27 are criminal law additions. No. 6 deals with "false representations" for the purpose of obtaining passports. No. 12 seeks to prevent corrupt commissions being taken by agents in relation to the affairs of their principals, and embraces in its scope the case of agents knowingly using receipts, accounts, or "other documents" which may be "false or erroneous or defective in any material particular." In matters where the Government is concerned increased penalties are provided. The consent of the King's Advocate is required before a prosecution can be instituted. No. 27 enlarges the ordinary definition of "theft," including in the term embezzlement and fraudulent conversion. A fraudulent taking includes the case of a person "finding" when "the finder at the time of finding believes that the owner can be discovered by taking reasonable steps."

Education.—Nos. 7, 24, and 25 are education laws, the two last important, dealing with elementary education (No. 24) and secondary education (No. 25) of persons other than those composing the "Greek-Christian" community. With a higher standard of qualification the pay and position of teachers are much improved, and on retirement gratuities or pensions are provided for. Special financial arrangements are made so that the increased expenses may fall upon the section or sections of the community immediately concerned, while Boards of Control and governing bodies secure an added control by the Government and increased efficiency in the schools.

Dogs.—No. 10 attempts indirectly to limit the number of ownerless dogs by compelling owners to place badges on their dogs or risk their destruction.

Arms.—No. 11 is a vigorous effort to stop the prevalent dangerous custom of carrying of daggers and pointed knives.

Imports.—No. 13 enables importers of goods mainly manufactured or produced within the British Empire to enjoy preferential rates and No. 23 provides a series of new schedules in regard to customs dues, etc.

Vehicles.—No. 14 imposes a duty on carters travelling at night to attach lights to their vehicles.

Census.—No. 15 makes the usual provision for a census in 1921.

Trade Marks.—No. 17 is an important local amendment to the Trade Marks Registration Law, 1910, and enables marks that have for "not less than two years been *bona fide* used in Cyprus upon or in connection with any goods (whether for sale in Cyprus or exportation abroad) for the purpose of indicating that they are the goods of the proprietor of the mark by virtue of manufacture, selection, certification, or dealing with or offering for sale" to be registered in a special part B of the Register of Trade Marks apart from other forms of trade marks registered in part A of the Register. Provision is made to prevent mere names or "the only practicable names" of goods or articles being registered and guard against certain abuses likely to affect both parts of the Register.

Firearms.—No. 19, besides prohibiting importation of rifles without permission, provides for a general registration of all firearms and prohibits without licence their manufacture or sale by dealers. No one is permitted to have a firearm without a licence.

3. PALESTINE.

[*Contributed by* NORMAN BENTWICH, ESQ., M.C.]

A Civil Government was established in Palestine on July 1, 1920, when the Right Honourable Sir Herbert Samuel, who had been appointed High Commissioner for his Britannic Majesty's Government, took over the Administration from Major-General Sir Louis Bols. Up to that date the Military Administration known as Occupied Enemy Territory Administration had been responsible for the government of the country since the Occupation at the end of 1917. The legislation of that Military Administration during the years 1918–19 has already been dealt with in the *Journal*.

A Conference of the principal Allied Powers which was held at San Remo in April 1920, resolved that the Mandate for Palestine should be conferred upon Great Britain and reaffirmed the principle of the Declaration made by the British Government in 1917 in favour of founding a national home for the Jewish people in Palestine. The terms of the Mandate have still to be approved by the Council of the League of Nations, which has ruled that it cannot consider the Mandates for the countries to be detached from the Ottoman Empire until the Treaty of Peace has been ratified between the Allies and Turkey. The legal basis, therefore, of the Palestine Administration has not been altered and there is no change of sovereignty, but the spirit of the Administration has changed considerably. Since the appointment of the High Commissioner it has regarded itself as a permanent Government, and has taken steps, which were not possible for the temporary Military Government, to make radical changes in the administrative system and to introduce large legislative measures. It maintains indeed the fundamental laws of the country which were in force under the Turkish regime; and the changes deal either with new subjects which were outside the scope of Turkish government, or with matters of urgency in which a modification of the Turkish law has appeared necessary.

The law-making authority is the High Commissioner, but he legislates through a consultative body. One of the first reforms which was introduced by the High Commissioner was the formation of an Advisory Council composed of notables of the country drawn from the different communities. The Council is consulted about Ordinances which it is proposed to issue. They are not a sovereign legislative body, nor is their approval actually necessary to the passing of an Enactment; but the formation of the Council was a first step towards representative institutions which it is intended to develop when the Mandate has been granted.

A summary is appended of the principal Ordinances which the Administration has passed during the year.

Immigration.—The Ordinance lays down as a general principle that entry into Palestine either for permanent or temporary residence shall be regulated by the High Commissioner from time to time according to the conditions and needs of the country.

S. 2 provides for the appointment of a Director of Immigration and Immigration Officers who have power to enter or board any vessel or railway train and to detain or examine any person thereon desiring to enter Palestine. Every such person must be in possession of a passport or similar permit.

S. 5 provides that any person other than a permanent resident of the country must satisfy the following conditions before entry:

(*a*) Possession of a passport *viséd* by a British authority;

(*b*) Possession of or in a position to obtain the means of supporting himself and his dependents. He must also satisfy the immigration officer that he is medically fit; and that he has not been sentenced in a foreign country for a crime.

Provision is made for registration of immigrants within fifteen days of their arrival. Persons certified to be travellers or whose stay will not exceed three months or in transit to another country are exempted from this condition. Power is given to the High Commissioner to make an order for deportation within five years of his entry into Palestine of any person who has not become a Palestinian citizen:

(*a*) If the Court sentences him to imprisonment exceeding one month and recommends deportation;

(*b*) If the Court certifies that he has been found wandering without means of subsistence;

(*c*) If the High Commissioner deems it conducive to the public good.

Certain offences are constituted for obstructing the carrying out of the Ordinance or endeavouring to evade its provisions. Power is given to exempt a person or class of persons through the provisions of the Ordinance, which anyhow is not to apply to foreign diplomatic consular officials or to members of the British forces or of the Civil Government of Palestine.

Land Transfer.—Transactions in land were prohibited under the Military Administration; but the Land Registries were reopened immediately after the Civil Government was established, and transactions were allowed subject to Government control. The Ordinance provides that a person wishing to make any disposition of immoveable property except as a devise by will or a lease not exceeding three years must first obtain the written consent of the Administration. The

Ottoman law provided that every transaction in land must be registered in an Official Land Registry and the Ordinance prescribes that before the Registrar can pass a transaction the Administration must approve of it. Consent is to be given either by the Governor of the District or by the High Commissioner. The Governor can consent where the person acquiring a property (*a*) is a resident in Palestine, (*b*) is not acquiring property exceeding in value £E3,000 or a certain area, (*c*) intends to cultivate or develop the land immediately. The Governor must further be satisfied in the case of agricultural land that either the person transferring the property if in possession or the tenant in occupation if the property is leased will retain sufficient land for the maintenance of himself and his family. He is also to withhold his consent to a disposition if the land has been disposed of within a year and the transferor fails to give a satisfactory reason for wishing again to dispose of it.

The High Commissioner can consent to any transaction in his absolute discretion. The Ottoman law in regard to a corporation owning immoveable property is modified by the provision that the High Commissioner may authorize a banking company to take a mortgage of land and a commercial company to acquire land for the purpose of its undertaking and may consent to the transfer of land to any corporation when satisfied that it will be in the public interest and will serve some purpose of public utility.

The general aim of these restrictions was to prevent land speculation in Palestine and to protect the existing tenants from eviction. Penalties were prescribed in case the terms of the Ordinance were not observed, and any disposition to which the consent of the Administration had not been obtained was null and void.

It may be noted here that in view of the unpopularity of the attempt to restrict transfers the Administration at the end of 1921 abolished all the restrictions except those for the protection of agricultural tenants.

Mortgage Law Amendment Ordinance. — The Ottoman Provisional Law of Mortgage issued in 1914 was adopted for all mortgage transactions with certain necessary amendments. The power to lend on a mortgage is granted to any companies or banks authorized to trade in Palestine in substitution of the Ottoman law which granted this only to banks and companies of Turkish origin. The mortgagee is saddled with notice of any existing lease of the property mortgaged which is duly registered.

Correction of Land Registers.—The Ottoman law declared that every disposition of land must be made through the Land Registry, and any private unregistered transaction was null and void. It also declared registration in the name of a nominee null, and the registered person alone had a legal title. In practice, like so many Ottoman laws, these provisions were disregarded and for the Administration to have applied them strictly would have been a denial of justice. The Ordinance, therefore, provides that any person claiming an interest in registered land can apply to the Court for an order that an entry be made in the Land Register stating the interest of the applicant. Documentary evidence must be produced to support such application.

Where immoveable property is registered in the name of a person who is alleged to hold on behalf of another person or corporation any person (including a corporation) claiming to be beneficial owner may apply to the Court for an order to be registered as owner in the place

of the person registered. He must produce documentary evidence to prove his right, and if the registered owner does not oppose the application an order may be given for correction. If the registered owner opposes the application, the Court may order a caution to be placed upon the Register. The Ordinance was declared to be in force for a year, but was extended by a subsequent Ordinance in 1921 for a further period of a year.

Advertisements Ordinance.—Steps were taken at once to protect the historic scenes and the holy towns of Palestine from defacement by advertisements. Art. 1 provides that no advertisement is to be exhibited upon any hoarding or similar structure, or on any wall, tree, fence, gate, or elsewhere in Palestine except on special municipal hoardings within the municipal area and in places specified by the District Governor outside, except that a person in a municipal area can exhibit on his own premises an advertisement relating to his business or occupation. A municipality within its area and the District Governor elsewhere can make by-laws regulating the size and form of the advertisement exhibited in accordance with the Ordinance and for fixing the fees. Penalties are prescribed for infringement of the rules.

Penal Law.—(1) *Official Secrets Ordinance.*—The Ottoman law was defective about communicating official secrets; and this Ordinance makes it an offence punishable with imprisonment for one year or a fine not exceeding £E100 for an official or employee of the Government without special authorization to communicate information which has come to his knowledge by reason of his official position to a person who is not in the service of the Government, and also for any paper or periodical to publish such communication which it has reason to know has been improperly communicated.

(2) *Exhibition of Flags.*—Another minor amendment of the Ottoman law which was called for was the prohibition of the carrying or exhibiting the flag or emblem of any State for the purpose of any partisan demonstration.

(3) *Destruction of Fish.*—The Ordinance providing that the destruction of fish by the use of dynamite or other destructive substances or matter is an offence punishable up to six months' imprisonment or fine of £E50.

Copyright Ordinance.—The Ottoman Law of Copyright issued in 1910 was found to be defective, and in order to bring the law into accord with those of the later international conventions, it was amended and its provisions were extended to phonographs, records, perforated rolls, and other contrivances for the mechanical reproduction of sounds. The period of copyright was extended to that prescribed by the English law, viz. the life of the author and a period of fifty years after his death.

The requirement of the Ottoman law that copies of the work must be deposited and the work registered in Constantinople was cancelled; and the penalties for infringement of copyright were amended to bring them into accord with the English law.

Antiquities.—The Ottoman Law of Antiquities was found to be inadequate and a new comprehensive Ordinance which applies the principles laid down in the Annex to art. 421 of the Treaty of Sèvres, that were agreed upon by a representative body of archæologists, was enacted by the Administration. The Ordinance provides for the establishment of a Department of Antiquities for the protection of the

historical monuments and antiquities of Palestine and for the establishment of an archæological Advisory Board consisting of the Director of Antiquities and persons nominated annually by the principal schools of archæology in Palestine. The Advisory Board are to be consulted with reference to (i) all applications for permits to excavate; (ii) the supervision of and regulations for excavations in Jerusalem; (iii) the projects of conservation or restoration of historical buildings; (iv) amendments of the law dealing with antiquities; (v) questions in which different international interests may be involved.

An antiquity is defined as any object or construction made by human agency earlier than A.D. 1700. There is power to exempt any class of antiquities from the operation of the Ordinance and moveable objects in the possession of and in actual use for a religious purpose are definitely excluded. All antiquities hereafter discovered are declared to be the property of the Government; but provision is made for rewarding the finder if the Government elects to appropriate the antiquity. Private persons owning antiquities must make a declaration to the Department with a description of their antiquities and any antiquity found which has not been declared is liable to confiscation. A person in possession of a collection must allow the Director to inspect it.

C. 4 of the Ordinance makes provision for drawing up a schedule of historical sites. Where such sites are registered as private property the Director of Antiquities may make arrangements with the owner for the preservation and inspection of the antiquities or for purchasing the site or removing any antiquity on payment of compensation for damage caused by the removal. The owner of an historical site must give reasonable facilities to the Department to inspect the site and study the antiquities thereon; but this provision does not apply to the sites or buildings which are in the possession of a religious body and in actual use for religious purposes, except that no reconstruction can be made in such building without the consent of the Director. The care of historical sites may be relegated to any approved Society or institution, which will thereupon receive all the powers of the Department as to inspection.

C. 5 of the Ordinance contains full provisions as to permits to excavate, and provides that the Director of Antiquities, after the close of the excavations, can choose such objects as are in his opinion needed for the scientific completeness of the Palestine Museum, and shall make a fair division of all the other objects between the Museum and the person to whom the permit to excavate was granted, "aiming as far as possible at giving such person a representative share of the whole result of the excavation."

C. 6 deals with trading in antiquities and requires every person dealing in them to be in possession of a licence granted by the Department. No person can deal in antiquities unless he has a certificate of possession for the antiquity granted by the Department or unless the antiquities are included in a Declaration made by him of his collection acquired before the passing of the Ordinance.

C. 7 regulates the exportation of antiquities and requires a licence from the Department for any export. The applicant may be required to deposit the antiquity with the Department for inspection, produce a certificate of possession, and declare the value of the antiquity. The Government is given a right of pre-emption over the antiquity if it desires

to retain it; and may dispute the declared value and require it to be fixed by appraisal.

C. 8 specifies severe penalties for infringement of the provisions of the Ordinance. It has been said that the short effect of the Ordinance is to make the possession of antiquities a notifiable disease.

Forestry.—The Ottoman law in regard to forests was also found to be inadequate, and a comprehensive Ordinance based on the Cyprus law on the subject was passed. All forest lands not private property are declared to be State forests, and private forests may be placed under Government protection. Provision is made for the management of State forests and for protecting the trees and for excluding the public from any closed forest area. Provision is also made for the protection of fruit trees; no person may fell any tree of the kind, whether growing in State forests or in private forests or in private land, without obtaining a permit from the forest officer.

Co-operative Societies.— In order to encourage co-operative enterprise an Ordinance has been modelled upon the Indian law on the subject, but rather wider in its scope, for the institution and control of co-operative societies, including societies:

(*a*) For loans and savings;
(*b*) For the purchase of raw materials;
(*c*) Sale of products;
(*d*) For the purchase and sale of commodities;
(*e*) For the acquisition and use in common of machinery;
(*f*) For the purpose of building houses, quarters, and garden cities.

A society may be registered with limited or unlimited liability. No member may hold more than one-fifth of the share capital or claim any interest in the shares exceeding £E500. Power is given for the Society to have a class of members who are not liable for debts but who share the benefits of members. A registered Society is a juristic person. Subject to the claims of the Government, a Society is entitled prior to other creditors to enforce any outstanding demands due to a Society from a member or past member. The power of distributing bonuses and dividends among members is limited. The Registrar is given large powers of control in the Society and an annual return is to be sent to him.

Regulation of Limited Companies. — The Ottoman law concerning limited liability companies was very rudimentary, and pending the framing of a comprehensive Ordinance on the subject rules were introduced based on the English law concerning the constitution, incorporation, management, and administration of trading companies.

Import and Export of Animals.—Another subject on which legislation was required owing to the inadequate provisions of the Ottoman law was the regulation of the import and export of animals so as to prevent the spreading of disease.

Credit Banks.—In the Ottoman regime there was a Government mortgage bank for the assistance of agriculture, but in order to encourage the establishment of such banks by private bodies an Ordinance was introduced granting facilities to any authorized credit bank.

Registration of Motor-cars.—The Rules issued by the Military Administration for registering motor-cars were revised and a fresh tariff of fees was introduced.

Prevention of Crime.—The Ottoman law was found to contain

insufficient provision for dealing with suspected criminals and an Ordinance was passed, modelled on the Indian law, for binding over persons suspected of seditious activity or of general criminal conduct, to produce sureties for good behaviour or to give a bond. In default of their doing so they will be committed to prison, and in case of their subsequently failing to keep the peace the bond would be forfeited in addition to any other penalty.

Before the Civil Government was established under the High Commissioner the Chief Administrator of the Military Administration issued several Ordinances which may be briefly noted.

Profiteering and Food Control.—An Ordinance based on the English law was passed providing for the setting up of local committees to check illicit trading. Also another Ordinance with a similar aim providing for a central food control board and local food control committees to regulate the price of commodities which are in common use. Experience showed in Palestine, as elsewhere, that such legislation was difficult to enforce.

Limitation of Rents.—The Ordinance which was passed in 1919 restricting the Increase of Rents and protecting tenants from eviction by the landlord was renewed for a further year. The landlord could only recover his premises on proof either that (1) the tenant had broken the conditions of the contract, or (2) the tenant by sub-letting the premises was making an unreasonable profit, or (3) that the landlord required the premises for the occupation of himself or some member of his family, and that alternative accommodation was available for the tenant.

Cadastral Survey.—The Administration instituted a cadastral survey, and an Ordinance was passed giving powers to the officers of the survey to enter upon property and to require the inhabitants to demarcate their lands and protect boundary posts.

FOREIGN.

1. CHINA.

[*Contributed by* Professor Wang King Ky.]

Provisional regulations governing the appearance in Court of lawyers of countries which are not entitled to consular jurisdiction were promulgated December 28, 1920, as follows:

Article 1.—Any citizen of a country which is not entitled to consular jurisdiction who in his own country has received a lawyer's certificate and practised his profession may after investigation by the Ministry of Justice apply in accordance with the Revised Provisional Regulations Governing Lawyers for the lawyer's certificate.

In applying for the lawyer's certificate, he shall hand to the High Procurator his lawyer's certificate of his own country and the documents of his nationality for transmission to the Ministry of Justice for examination.

Article 2.—A citizen of a country which is not entitled to consular jurisdiction who has received the lawyer's certificate mentioned in the preceding article, after registration according to law and becoming a member of the Chinese Lawyer's Association, may be allowed to appear in Court to practise his profession.

Article 3.—A lawyer of a country not entitled to consular jurisdiction in the practice of his profession in Court shall be restricted to matters in

which he is empowered to act by citizens of countries not entitled to consular jurisdiction and in cases of citizens of countries not entitled to consular jurisdiction.

Article 4.—The provisions of the Revised Provisional Regulations Governing Lawyers and of other laws are applicable in case the rules and regulations which a lawyer of a country not entitled to consular jurisdiction shall observe are not provided for by the present regulations.

Article 5.—The present regulations are applicable exclusively to citizens of countries not entitled to consular jurisdiction and are not to be availed of by citizens of countries entitled to consular jurisdiction.

Article 6.—The present regulations come into force on the day of promulgation.

Rules governing the organization of Courts in the Special District of the Eastern Provinces were promulgated as follows:

Article 1.—To facilitate the administration of justice within the area of the Chinese Eastern Railway, it shall be known as the Special District of the Eastern Provinces.

Article 2.—There shall be established at Harbin in the Special District of the Eastern Provinces a High Court and a District Court and also along the railway a number of Branch District Courts, the places of whose establishment to be determined by order of the Ministry of Justice.

Article 3.—The High Court, the District Court, and the Branch Courts shall each have from one to three procurators, who shall exercise their judicial functions independently.

Article 4.—The High Court and the District Court in the Special District of the Eastern Provinces may have foreign counsellors and investigators appointed by the Ministry of Justice. The Branch District Courts may also temporarily have foreigners appointed by the Ministry of Justice as counsellors or investigators. (The functions of the Courts of the Justices of Peace which were originally established shall continue to be exercised by the Branch District Courts.) Special provisions shall be made concerning the appointment and removal of the counsellors and investigators and their duties.

Article 5.—The jurisdiction of the High Court and District Court in the Special District of the Eastern Provinces shall be co-extensive with the territory within the area of the Chinese Eastern Railway, and the territorial jurisdiction of the Branch District Courts shall be determined by order of the Ministry of Justice.

Article 6.—Attached to the District Court shall be established a Court of Summary Jurisdiction, which shall have jurisdiction over the first trial of the cases within the cognizance of Courts of the first instance. The jurisdiction over cases of the Branch District Courts is the same as that of the Court of Summary Jurisdiction.

Article 7.—The District Court may make use of the circuit system in regard to cases arising within the territory of the railway area.

The regulations governing the circuit system of judicial administration shall be specially provided for.

Article 8.—Appeal lies from the decision of the Branch District Court or Court of Summary Jurisdiction to the District Court and from the decision of the District Court to the High Court.

Limited to interpretations of questions of law, appeal lies from the decision of the High Court as one of second instance to the Supreme Court.

Article 9.—Foreign counsel may be allowed to appear in cases concerning aliens which come under the cognizance of the Courts in the Special District of the Eastern Provinces.

Article 10.—The rules of procedure in the Courts in the Special District of the Eastern Provinces shall be specially provided for.

Article 11.—In case of lack of provision in these rules resort shall be had to the provisions of the law governing the organization of Courts and of the other statutory orders.

Article 12.—Amendments to these rules shall be effective on initiation by the Ministry of Justice and approval by the President.

Article 13.—These rules shall be effective from the day of promulgation.

Regulations governing the appointment, removal, and the functions of the foreign counsellors and investigators of the Courts in the Special District of the Eastern Provinces were promulgated as follows:

Article 1.—The counsellors and investigators of the Courts in the Special District of the Eastern Provinces shall be appointed by selections from the following categories of foreigners:

(1) Those who have been foreign judicial officers.

(2) Those who have been foreign counsel.

Article 2.—The counsellors and investigators provided for by the foregoing article are to be assigned by the Ministry of Justice to act in the High Court or District Court in the Special District of the Eastern Provinces as the case may be.

When necessary they may also be assigned to act in one of the Branch District Courts.

Article 3.—The counsellors or investigators are subject to supervision by the President of the High Court or of the District Court.

When assigned to the Branch District Courts they are subject to supervision by the judges of the Branch District Courts.

Article 4.—The counsellors and investigators of the High Court and the District Court are specially created for consultation by these Courts.

In cases in which Russians alone are involved the assistance of the counsellors or investigators of the Branch District Courts may be allowed.

Article 5.—In case of failure of duty the counsellors and investigators shall be removed by the Ministry of Justice.

Article 6.—Amendments to these regulations shall be effected on recommendation by the Ministry of Justice and approval by the President.

Article 7.—These regulations shall be effective from the day of promulgation.

Regulations governing the Committee on the Selection of Special Candidates for the Judiciary were promulgated on October 31, 1920, as follows:

Article 1.—The Minister of Justice recommends, from the categories of persons mentioned below, those whose education, experience, and character qualify them for judicial officers (together with certificates of qualifications and the relevant documents under Article 7), to the Committee on the Selection of Special Candidates for the Judiciary for consideration.

(1) Persons who are familiar with Russian conditions, are versed in law, and who have been engaged for above three years in diplomatic affairs in the Eastern Provinces.

(2) Persons who are well versed in the Russian language, spoken and written, and who, according to the order governing the examination of judicial officers, are qualified to enter for such examinations.

(3) Persons who made a study of law and political science in the universities or professional colleges in Europe or America and who have certificates of graduation.

Article 2.—The Committee on the Selection of Special Candidates for the Judiciary shall be composed of the following persons:

(1) Chairman of the Committee.

(2) Members of the Committee.

(3) Member whose duty shall be to supervise the examinations for selection.

Article 3.—The Chairmanship of the Committee on the Selection of Special Candidates for the Judiciary, whose duty shall be to take charge of matters relating to the selection, shall be undertaken by the Vice-Minister of Justice.

Article 4.—There shall be six members, who shall take charge of the matters relating to consideration and examination, and who shall be appointed by the Minister of Justice from the Councillors and Directors of Bureaux of the Ministry of Justice, the Justices of the Supreme Court, and the Procurators of the Procuratorate-General.

Article 5.—There shall be one member whose duty it shall be to supervise the examinations, and who shall be appointed by the Minister of Justice from the Procurators of the different grades of procuratorates.

Article 6.—The Committee on the Selection of Special Candidates for the Judiciary for the management of its miscellaneous affairs may have clerks appointed by the Minister of Justice from the Junior Clerks of the Ministry.

Article 7.—The method of selection of a special candidate shall be:

(1) To ascertain the standard of education attained at college lectures and examinations, and at the end of each college year and at graduation.

(2) To ascertain by reference to his experience and the nature of the work he has done his general capacity.

(3) To ascertain whether in regard to conduct, character, ability, and physique he is capable of becoming an efficient judicial officer, and of what class.

(4) To ascertain by a selective examination his standard of knowledge and his capacity for its application.

Article 8.—On receipt of the documents under provision (1) the Chairman of the Committee on the Selection of Special Candidates for the Judiciary is to name the members to investigate them.

Within ten days of the assignment of the documents to the members each member is to present a detailed report to the Chairman.

Article 9.—On receipt of the reports under the preceding article the Chairman is to fix a date for the meeting of the Committee to decide by majority votes, the Chairman having the casting vote in case of a tie.

Article 10.—Candidates who are specially referred to the members, when according to provisions (1), (2), and (3) of Article 7 they are considered as qualified to become judicial officers and when they are the authors of writings on the subjects mentioned in Article 12, or have other meritorious educational or political qualifications, may on concurrence by the Chairman or more than three members be proposed for decision by the Committee for exemption from the selective examinations.

Article 11.—The date of the selective examinations, when set by the Chairman of the Committee on the Selection of Special Candidates for the Judiciary, is to be notified in advance to the candidates.

Article 12.—The selective examinations will be conducted in writing and orally.

The subjects of the written examinations are as follows:

(1) The new provisional criminal code.
(2) Civil law.
(3) Commercial law.
(4) Civil procedure.
(5) Criminal procedure.
(6) The existing laws relating to the judiciary.

Persons under provisions (2) and (3) of Article 1 shall in addition be examined in advance in the spoken and written languages of the respective countries.

The subjects of the oral examinations are to be set by the Chairman as the occasion arises.

Article 13.—The Committee, on deciding a candidate to be qualified, is to transmit through its Chairman its decision, the detailed reports of the members, and the results of the examination to the Minister of Justice, and is also to notify the candidate to be selected.

Article 14.—Qualified candidates are to be recommended by the Minister of Justice for appointment in accordance with the present procedure for the appointment of judicial officers, but in recognition of cases of necessity particular candidates may be required to undergo a period of practical training of more than three months and less than one year.

Article 15.—If anything should happen before the appointment of a qualified candidate to disqualify him from becoming a judicial officer, or if after the expiration of the prescribed period of training he should fail to attain the standard required, the Minister of Justice may ask the Committee on the Selection of Special Candidates for the Judiciary to decide to register the cancellation of his qualification or prolong the period of his training.

Article 16.—These regulations shall be effective from the day of promulgation.

The following was the Presidential Mandate of September 23, 1920, withdrawing recognition from the Russian Minister and Consular officials:

In a memorandum the Ministry of Foreign Affairs states that, for the past few years, Russia has been divided into a number of hostile camps which continue to wage an internecine warfare on one another without organizing a Central Government which represents the will of the Russian people; that, for the time being, it is impossible for this country to resume normal diplomatic relations with her, while the Russian Minister and Consular Officials have long since lost the competency to represent their country and can no longer continue to perform the duties which are charged with responsibility; and that, having verbally informed the Russian Minister in Peking of the intentions of this Government, the Ministry considers it necessary and proper that a Mandate be issued proclaiming to the effect that the Russian Minister and Consular Officials in China shall no longer be treated as such by this country.

On perusing the memorandum, we find that what is set forth therein is nothing but a plain statement of facts. But, considering the territorial propinquity and the long-existing friendship between China and Russia, we wish it to be understood that our friendly relations with the Russian people remain the same, in spite of the fact that we shall cease to treat the Russian Minister and Consular Officials as such. The life and property of all peaceful Russian residents in this country shall be entitled to the protection of this Government as effectively as before. In regard to Russia's internal strife, we shall continue to maintain a strict neutrality, and assume the same attitude towards her as the Allied and Associated Powers. As to all matters in connection with the Russian Settlements, the Railway Zone of the Chinese Eastern Railway, and Russian subjects in this country, they shall be dealt with by the Ministries and the Chief Officials of the Provinces concerned.

2. FRANCE.

[*Contributed by* O. E. BODINGTON, ESQ.]

Holiday Tax (*Taxe de Séjour*).—This law makes compulsory the *taxe de séjour* which was hitherto only optional. It applies first to what are described as hydromineral and climatic stations and second to

"centres of tourism"—that is to say, places possessing natural or artistic curiosities so defined by law. The law is applicable to people not domiciled in the commune or possessing no residence there which renders them liable to be assessed to personal taxation. The minimum of the tax is 10 centimes per person and per day, the maximum a franc. It may vary according to the periods. It cannot be assessed for more than four weeks. Soldiers wounded or mutilated or suffering from illness contracted during the war are exempted. The tax is devoted to sanitary and improvement works in the case of the first category of places, to the upkeep of monuments, improvement of conditions of access, residence, transport, as well as sanitary improvements in the stations of the second category.

Treaty of Versailles.—This Treaty was promulgated by a lengthy decree of January 10, 1920.

German Patent Applications.—By a law of January 15, 1920, where inventions which are the object of French patents belonging to German subjects or applications for French patents filed in the name of German subjects are of a nature to interest the national defence or involve some public interest, they may be expropriated in consideration of an equitable indemnity for the benefit of the inventors or their legal representatives. The indemnity is fixed by a special commission organized for that purpose. The patent so expropriated may be worked in the State workshops, or for the account of the State in private workshops.

Transports (*Civil Requisition.* Law of February 27, 1920).—This law empowers the Civil Authorities even in time of peace, in case of the interruption, even only partial, of the railroads, to secure the means of transport necessary for the food supply of the population and the working of the public services by means of temporary requisition. Such requisition applies to:

(1) Motor-lorries of all kinds;
(2) Touring cars which may be useful for carrying out the service;
(3) Horse carts, boats, and in general all other means of transport;
(4) Workshops, garages, and so forth;
(5) Change parts for the repair of the vehicles, motor spirit, and forage.

Prior to any requisition a ministerial decree shall determine the departments to which the requisition shall extend. The right of requisition is vested in the Minister of Public Works, who may delegate it to the Prefects. The requisition gives rise to an indemnity in the shape of rental. Penalties are instituted for attempted evasion of the requisition.

Trade Unions.—Married women carrying on a profession or a trade may become members of Trade Unions without the authority of their husbands, and take part in their administration and management. Minors of at least sixteen years of age may become members of Trade Unions with the consent of their parents or guardians, but cannot take part in the management or administration.

Prior to this law a woman could not enter a Trade Union except with the authority of her husband, and could not under any circumstances share in the management.

The law of 1884 conferred upon Trade Unions legal personality with the right to sue and be sued. It, however, restricted their right to acquire landed property to that necessary for their meetings, their libraries, or courses of professional teaching. The present law gives

them the power to acquire, without any Governmental or other authorization, both real and personal property to any extent. It also extends their capacity to contract, and, without permitting them to carry on commercial transactions, it permits them to constitute reserve, benefit and compensation funds, and build workmen's dwellings and purchase land for gardens, physical education, or hygienic purposes. It also permits them to institute, administer, or subsidize professional institutions as well as co-operative societies.

Leases (Law of May 4, 1920).—This law provides for extension of leases made between August 1, 1914, and the date of cessation of hostilities—that is to say, October 24, 1919. Tenants are entitled to an extension of such extent as will ensure them, taking account of the duration of the lease or of its renewals already granted, two years' enjoyment dating from the date of cessation of hostilities.

Commercial Contracts ("*Loi Failliot*").—The law in question provides for the cancellation of contracts for delivery of goods, in cases where the execution of the contracts owing to war conditions would have involved such hardship to one or other of the parties as could not have reasonably been foreseen when the contract was entered into, owing to the increase of price of raw material, of labour, of carriage, and so forth. It is in the nature of the relief granted by our Courts Emergency Powers Acts. This provides that the Law Failliot shall remain in force until July 31, 1920. It also provides that the contracts alluded to in the Law Failliot shall be cancelled *ipso facto* as of July 31, 1920, if an application for their execution has not been previously made. It is a little difficult to know to what contracts this article applies, whether to all contracts for delivery of goods made before the war generally, or those as regards which an application has already been made under the Law Failliot, but not adjudicated upon.

It is for the present apprehended that the Courts will not apply it to contracts made before the war which have lain dormant—that is to say, which have neither been executed nor form the object of an application for cancellation, suspension, or execution.

Fine Arts ("*Droit de suite.*" Law of May 20, 1920).—This law gives to artists what is described as a *droit de suite* or a lien on their works which are publicly sold. This right can also be enforced by their next-of-kin in case of their death during this statutory period of copyright. This lien is represented by percentages deducted from the proceeds of sale at the following rates:

1	per cent.	from	1,000	francs	to	10,000	francs.
1½	,,	,,	,, 10,000	,,	,,	20,000	,,
2	,,	,,	,, 20,000	,,	,,	50,000	,,
3	,,	,,	above 50,000	,,			

Finance (law of June 25, 1920).—This law modifies the method of calculation of income-tax, the result of which it is difficult to calculate in advance, but which will certainly involve an increase on the previous tariff.

Excess Profits Duty is to cease to apply to profits realized after June 30, 1920.

The duty on sales of real estate is increased from 7 per cent. to 10 per cent.

The duty on leases is increased from 20 c. per cent. to 60 c. per cent.

Succession duties are graduated according to the number of children

there are in the family. Families of three children pay a less rate than those of two, which pay a less rate than those of one child only; 10 per cent. of the total assets are allowed to be deducted for every child above the fourth. The duty is graduated according to the amount of the estate. The duties are generally increased, reaching from 1 per cent. in an estate not exceeding 2,000 francs between relatives in the direct line of the first degree to as much as 59 per cent. in estates of over 50,000,000 francs passing between relatives beyond the fourth degree or persons between whom there is no relationship.

Annual composition for stamp duty on bearer stock is raised to 10 centimes per 100 francs.

The transmission tax for registered stock is increased to 50 centimes per 100 francs.

The dividend tax, formerly 5 per cent. on personal securities, is increased to 10 per cent.

The receipt stamp duty has been simplified and is under this law:

25 centimes up 100 francs.
50 centimes between 100 francs and 1,000 francs.
1 franc for sums exceeding 1,000 francs.

The law institutes a tax of 10 per cent. on the price of articles described as *objets de luxe*. A list of these articles is published by decree:

This law also institutes a turnover tax of 1 per cent. assessable on persons who habitually or occasionally purchase in order to resell or do acts which belong to those professions subjected to the tax on industrial and commercial profits instituted by the law of July 31, 1917.

Exemptions from this tax are as follows:

(1) The sale of bread;

(2) The sale of State monopolies, such as stamps and stamped paper;

(3) The working of public services which are bound to apply fixed tariffs or tariffs approved by public authority;

(4) The business of stockbrokers, maritime brokers, maritime insurance brokers, and generally all other professions giving rise to commissions or brokerages fixed by law or decree, and other special businesses of less importance which are specified in the law.

The rate is 1 per cent. with one-tenth extra devoted to the exchequer of the departments and communes, total $1\frac{1}{10}$ per cent. On articles of luxury it is 10 per cent.

Motor-cars —The taxes on motor-cars are increased and made payable every three months.

Law of June 20, 1920.—This law provides for proof of births, deaths, and marriages the originals of which have been destroyed or disappeared in the war, by means of what are known as *Actes de Notoriété*, which are statements made by persons with whom the parties interested are acquainted and which are substantially the equivalent of Statutory Declarations. Penalties are instituted for false declarations. The documents in question are drawn up by the Justice of the Peace of the domicile or residence of the applicant.

Abortion (law of July 31, 1920).—This law increases the severity of the penalties for inciting to abortion by means of speeches at public meetings or the sale, putting out for sale, or offering even in a non-public manner, or of writings, printed matter, and so forth inciting to abortion. Persons selling, or distributing, or aiding and abetting in

the distribution of remedies, objects, instruments, or articles of any sort designed for committing the crime of abortion are punished in the same way. The penalty is imprisonment from six months to three years and a fine of from 100 francs to 3,000 francs.

3. HOLLAND.

[*Contributed by* Dr. C. Torley Duwel.]

Education.—Act of March 1, 1920, for modification and amplification of the University Education Act (*Gazette*, No. 105) contains an important modification in the organization of gymnasial and university education and of the examinations connected therewith.

Act of March 1, 1920, for modification and amplification of the Act for settling Secondary Instruction (*Gazette*, No. 106), contains a similar modification with regard to secondary instruction.

Act of October 9, 1920, for settling general educational Primary Instruction (*Gazette*, No. 778). New settlement of organization, etc., of Primary Instruction.

Dutch Nationality.—Act of December 31, 1920, for further modification of the Act of December 12, 1892 (*Gazette*, No. 268), on Dutch Nationality and Citizenship, lastly modified by the Act of July 15, 1910 (*Gazette*, No. 216, *Gazette*, No. 955), brings alteration in the naturalization dues.

Diplomatic Service.—Decree of October 23, 1920, providing for:

(*a*) Repeal of the Diplomatic Rules, 1912 (*Gazette*, No. 289), as well as of the Royal Decrees of April 25, 1918 (*Gazette*, No. 266), and of January 27, 1920 (*Gazette*, No. 41).

(*b*) Laying down new rules for Diplomatic Service (*Gazette*, No. 796), settles ranks, stipends, diplomatic service, and leave.

Civil and Commercial Law.—Act of March 26, 1920, for modification of the terms meant in Articles 523, 526, and 549 of the Civil Code and abolition of the Act of July 9, 1855 (*Gazette*, No. 67, *Gazette*, No. 148), shortens the terms required for the statement of presumable death in case of shipping disasters (and the like).

Act of March 26, 1920, for modification of the Commercial-Register Act, 1918 (*Gazette*, No. 151), modifies the tariffs of what is due on registry.

Act of March 26, 1920, settling the formation, organization, and competence of the Chambers of Commerce and Manufactories (*Gazette*, No. 151), settles the formation, etc., of the Chambers in question.

Decree of August 17, 1920, providing for settlement of the number, the jurisdiction, and the seats of the Chambers of Commerce and Manufactories.

Act of October 9, 1920, providing for organization of the Government Insurance Bank (*Gazette*, No. 780) settles organization and investment of the capital.

Revolutionary Turbulences.—Act of July 28, 1920, providing for further provisions for fighting revolutionary turbulences (*Gazette*, No. 619). Criminal provisions against revolutionary turbulences.

Navigation.—Act of March 26, 1920, for settling the Masters' Act (*Gazette*, No. 154), prescribes the qualifications for masters on seagoing ships; also for mates and engineers.

League of Nations.—Act of March 6, 1920 (*Gazette*, No. 108), authorizes the Dutch Government to join the League of Nations and to be party to the provisions of Article 13, paragraphs 1 and 2 of the League of Nations Treaty.

Veterinary Act.—Act of March 26, 1920, providing for Government Veterinary Inspection (*Gazette*, No. 153), contains measures for promoting the health of the live stock of cattle and for inspection of cattle and meat destined for export.

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AND

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"Δεῖ καὶ τὰς ἄλλας ἐπισκέψασθαι πολιτείας . . . ἵνα τό τ'ὀρθῶς ἔχον ὀφθῃ καὶ τὸ χρήσιμον."—Arist. *Pol.* II. 1.

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AUSTRALIA AND THE PRIVY COUNCIL.

[*Contributed by* THE HON. SIR JOSIAH H. SYMON, K.C.M.G., K.C.]

ON January 1, 1922, the Commonwealth of Australia came of age. Twenty-one years—that is not a long time in the history of a Federal Union of Self-governing States, any more than in the life of a nation; but it has been long enough to test, both in peace and war, the constitution under which the Commonwealth was established. On the whole, it has not been found wanting. To say that it is not perfect is merely to say it is a written Constitution—the work of human minds and human hands. It is not immune from revision and amendment, any more than the Constitution of the United States, which Lord Rosebery, with fine rhetoric, described as "matchless," and which has been amended many times.

The social, political and industrial changes, particularly of the last ten years, have been immense, and it would have been little short of a miracle if the Constitution, framed under the conditions of more than twenty years ago, had responded to, and adequately met, all new conditions without amendment.

There is, however, one part of the Constitution which these changes do not affect: that is the part which established the Federal Judiciary, except that the number of High Court Judges has been from time to time increased to keep pace with the increased volume of legal business.

The Commonwealth was a new State under the Crown created by the Union of the constituent States, which retained their autonomy, except to the extent of the powers expressly or impliedly transferred to the Federation. For the New Federal State a Federal Judiciary was necessary. The jurisdiction of the State Courts remained. Appeal to the Privy Council had always been incident to the State Judiciary.

It fell to my lot, as member of the National Federal Convention and Chairman of its Judiciary Committee, to frame the judiciary clauses of the Constitution, which the Committee unanimously

approved, and which were subsequently adopted by the Convention at its Adelaide and Sydney Sessions in 1897. These clauses, as originally framed and embodied in the draft-proposed Constitution, constituted the High Court the ultimate and final Australian Court of Appeal, wholly superseding appeal to the Privy Council—"Except that the Queen may, in any matter in which the public interests of the Commonwealth or of any State or of any other part of her Dominions are concerned, grant leave to appeal to the Queen in Council from the High Court" (s. 5 of Draft Constitution of 1897).

So they remained until the closing hours of the last session of the Convention in Melbourne, in April 1898, when the subject was reopened and the clauses modified so as to leave unimpaired and in full force the right of appeal from the State Supreme Courts direct to the Privy Council and to permit of appeals from the High Court by special leave except, as to both State and Federal Appeals, in matters involving the interpretation of the Federal Constitution or the Constitution of a State unless the public interests of some other part of the Dominions were involved. I do not overlook the reservation that the Federal Parliament might make laws limiting the matters in which leave to appeal might be asked. That, it was clearly understood, only applied to appeals from the High Court and did not affect appeals direct from State Courts, the late Sir Edmund Barton—then Mr. Barton, the Leader of the Convention—stating in the Convention, "We have no power to interfere with that. . . ."

One main reason for this eleventh-hour modification was the strong objection of the States and their citizens to give up their right of appeal to the Privy Council in ordinary litigation. That and other reasons prevailed.

So modified, the clauses stood in the proposed Constitution submitted twice by referendum to and approved and accepted by the people of Australia. It must therefore be taken that Australia then affirmed the retention of the Privy Council appeal, with the above restrictions only, though it may be doubted whether the people bothered their heads much about what probably seemed to them a purely technical matter, or whether the question affected a single vote. The vital momentous issue was Federal Union or no Federal Union—one Law Court, more or less concerned them little or nothing—all moreover being equally the Queen's, now the King's—Courts within the Empire.

With these modified judiciary clauses, ratified and accepted

by the people, the proposed Constitution was submitted to the Imperial Parliament for enactment. Clause 74 became a sort of storm centre—Mr. Chamberlain desired to widen the ambit of appeals. The Australian delegates, led by Sir Edmund Barton, urged with marked and strenuous ability the view expressed in Clause 74, as adopted by the Australian people. Eventually Mr. Chamberlain proposed a compromise which the delegates accepted, and which is Clause 74 in the Commonwealth Constitution, as it became law and now exists.

That compromise, or in other words, Clause 74, permits no appeal to the Privy Council from any decision of the High Court upon the interpretation of the Constitution—broadly upon any Constitutional question—but the High Court may certify that the question is one which ought to be determined by His Majesty in Council, and if for any special reason they so certify, then the appeal shall be to His Majesty in Council without further leave.

In other words, the cardinal principle is maintained that the High Court of Australia has exclusive jurisdiction to determine finally all constitutional questions, with power, if for sufficient reason it thinks fit, to call in aid the Privy Council, as it might be in a quasi-consultative capacity although in form and result an appeal. The right and competence of the High Court to determine finally all constitutional questions is recognized and preserved—neither Privy Council nor any human being or authority can interfere. Its power of final decision is absolute, none the less because of its discretion—apparently equally absolute—to take the opinion of the Privy Council or permit that opinion to be taken if the interests of justice and the Commonwealth require. Recently the High Court refused to certify in the case of the *Amalgamated Society of Engineers* v. *The Adelaide Steamship Company, Limited, and others*, (1920) 28 C.L.R. 129—a case of great constitutional importance and gravely affecting the control by a State of its own instrumentalities and incidentally of its own supplies. I shall refer again to this later on.

On this point it is to be remembered that the crucial argument of those, like myself, who then fought hard that the jurisdiction to decide all constitutional questions should reside in our Federal Supreme Court, was, that if Australia was fit to frame its own Constitution she was fit to interpret it. That principle is fully satisfied, and it is no derogation, but an advantage, that our own High Court, is entrusted—it would seem solely—with the wise and

salutary discretion to take so to speak, if it think fit, another opinion, as one leading counsel may desire the opinion of another leader of larger or wider experience than himself.

Except, then, as to constitutional questions the right of direct appeal from the State Courts was left untouched and Her Majesty's right by virtue of her Royal prerogative to grant special leave to appeal from the High Court to Her Majesty in Council was not to be impaired.

The exercise of this prerogative right is committed to the Privy Council, who do not lightly grant special leave. Moreover, as to this the Commonwealth Parliament—the reservation of this power being retained—may limit the matters upon which such special leave may be asked—may limit them out of existence, except that proposed laws containing such limitation are to be reserved for His Majesty's assent. No one, however, can suppose that if the Commonwealth Parliament did choose to enact limitations, even to the extent of wiping out these appeals by special leave, His Majesty would be advised without the gravest reason to withhold assent.

If, therefore, we do not want to go beyond our own territorial Courts and avail ourselves by way of consultation or otherwise of the learning and aloofness of another Imperial Court, we need not do so.

With the settlement of this question, under what I have called the Chamberlain Compromise, the Delegates, trusted by the people, were content; all the members, I believe, of the Judiciary Committee, including myself, were content; the people of Australia were and are in my opinion content; the legal profession in Australia were and are content; and Clause 74 has worked well and given satisfaction. Indeed it hardly differs in substance, though it does in form, from the appeal provisions of the Draft Constitution adopted by the Referendum.

Then, let us consider the rights of the component States. Each State, as we have said, retains its own judicial system and its control with the right of direct appeal from judgments of the State Supreme Courts to the Privy Council, which it did not surrender on Federation except so far, of course, as any such judgment raised or involved constitutional questions. A defeated litigant in a State Supreme Court may, but need not, go to the High Court with his appeal. If he does then he can go no further without special leave from the Privy Council. If, however, he does not go to the High Court he can go to the Privy Council direct as of right.

I have never heard it suggested that the States are disposed to give up this right of appeal to the Privy Council, or that they would look upon any attempt by the Commonwealth to force them to do so as other than a breach of faith—if not tyranny.

There is a good deal of jealousy between the States and the Commonwealth. The States rather incline to think the powers of the Commonwealth should be, if not lessened, at least not enlarged. I do not know that the suspicion — unreasoning it may be — in the States that the High Court might lean to the Commonwealth in constitutional or other questions between the State and Commonwealth has been altogether dissipated. Certainly this is not a time when any observant person would think it likely the States could be successfully asked to give up their right of appeal to the Privy Council and be content with the exclusive appellate jurisdiction of the High Court.

In Canada the position is different. The British North America Act was not the work of a representative Canadian Convention. It was framed and drafted in London. It was never submitted for approval or ratification to the people of Canada. Under it the whole judicature—federal and provincial — is one Dominion system. The provincial judges, with I think one or two immaterial exceptions, are appointed and paid by the Dominion. Many able and eminent Federalists in Australia contended that, without impairing the Federal principle, the establishment of the High Court might have been indefinitely postponed and its expense saved and appeal to the Privy Council left unrestricted—making the Privy Council in effect the Federal High Court—that would have seemed a confession of incompetence, but it would not have been in conflict or indeed inconsistent with a federal system within the Empire. Federated Canada had existed some eight years under the British North America Act before the Dominion Supreme Court was established.

Personally, like most—I think I may say all—of my colleagues of the Judiciary Committee, I was, in those evolutionary days, opposed to any appeal being permitted to the Privy Council from either State or Federal Courts. The argument that, if Australia was fit to enact her own laws she was fit to interpret them, seemed to us convincing and it was the basis of our advocacy in the Convention and before the people. This is now without force because, as I have shown, we have the power and exclusive control of interpretation. We reinforced that argument by raising aloft the banner

of nationhood, contending that the first duty of a nation was to administer final justice to its people.

Experience and reflection since then satisfy me that the argument of nationhood was more or less fallacious as applied to this question of appeal. I now think it was, in a sense, a mere phrase and without substance having regard to the hard facts.

In putting it we failed, it seems to me, to take sufficiently into account that we were within the British Empire, under the same King and Flag, or to realize that this fact deprived the terms "nation" and "nationhood" of the sense and meaning necessary to the argument.

We rather confused British Empire nationhood—which we shared—with independent nationhood, which we did not possess. We did not sufficiently appreciate the anomalies. Those of us who then advocated, as part of the Constitution, the abolition of appeal to the Privy Council because we were creating a nation, were in that reason, I fear, mistaken.

The fundamental fallacy lay in this, that we were not creating a nation in the political sense. If we had been then it would have followed, as the night the day, that we should erect Courts to dispense final justice to our own citizens. The purpose of the old Federalists like myself was to remove the vice of disunion among the States as much and as far as possible—not to cure or replace it by secession from the British Commonwealth. What we did was to bring about a more perfect co-operation or union for common though limited purposes between the six self-governing States with the central idea of creating one single State in its relations with the Mother-country and the rest of the Empire and as a unit of the Empire in relation to foreign States. The purpose was not to endow with nationhood in the political sense, but to enable six self-governing States to act and speak as one self-governing Commonwealth in relation to certain specified and incidental subjects whilst retaining their own self-governing status in all matters not surrendered or delegated to the new Federal State.

The other argument as to being the final interpreter of the laws we make would obviously have applied to the self-governing States before Federation and equally have undermined appeal to the Privy Council, from the State Courts, upon matters arising under their own constitutions or their own legislation. This no one has ever contended. In any case, the argument has had little or no force since the enactment of the Constitution in its present form

and has none now. But I do not regret these arguments. The inspiration of achieving nationhood, even if the term were misapplied or required definition, was a potent incentive to the accomplishment of federal union, which may no doubt be spoken of, as in a sense, nationhood, but within the Empire.

Having thus in general terms sketched the present position and its genesis, the practical question is—Should it be disturbed? Should it be reopened and made the subject of fresh controversy at all, or with the view of cutting off all reference and appeal to the King in Council—for what seems to be sought, is not limitation, but extinction—"limiting it out of existence"? Is there anything to be gained by the change? Is there any demand for it? I know of none. Mr. Duncan Hall, in his interesting elementary work on *The British Commonwealth of Nations*, seems to think there is. The language in which he expresses his opinion is by no means restrained, and the statements by which he seeks to support it, though strong, are often unguarded and in some respects erroneous, with just a flavour of pedantry.

Let us briefly examine the matter—the appeal being as we have it, and the question being, Is it an advantage to be retained or a mischief to be excised?

(1) There is not, I think, any anomaly in the existence and maintenance of the appeal from one of the units of the Empire. It is only a question of what is expedient, what is in our own interest—how may we best secure the most authoritative decisions to make an end of controversy in litigated disputes of commensurate importance. This is not to be determined by using such sounding phrases as "judicial equality," "securing equality of nationhood in regard to judicial functions," and "the sole remaining judicial bond," and so on, as though we were down-trodden and enslaved. Do not these phrases remind one of Dr. Johnson, who, it was said, "would make his little fishes talk like whales"? It was the regime of Dublin Castle, not appeal to the House of Lords, which was Ireland's rock of offence. Even if the appeal could be rightly described as an anomaly that would not *per se* condemn it. The British Empire is a mass of anomalies. You meet them at every turn. There is no precedent even for the British Empire. Its very existence and cohesion is an anomaly. To stigmatize something as an anomaly—perhaps rightly—and seek to get rid of it merely on that account is unsafe. By such reasoning one might almost justify the extinction of the Empire.

(2) It is under these heads of "judicial equality" or "securing equality of nationhood with regard to judicial functions and the sole remaining judicial bond," that the subject is discussed in Mr. Hall's book. What and where is the judicial inequality? If we were deprived of access to the House of Lords or the Privy Council it might be said there was judicial inequality, and unequal discrimination between citizens of the same Empire. "Equality" we have now. Access to the highest Court of Appeal—maintained without expense to us—whether called Privy Council, House of Lords, or Imperial Court of Appeal equally with the other citizens of the Empire is the crown of that equality. It gives us everything that our fellow citizens in England and elsewhere enjoy. Then in what way does the appeal militate against or lessen our "equality of nationhood"—whatever that rather indeterminate and misleading phrase may mean? So far as I understand the sense in which it is used, we cannot have that equality of nationhood without separation and independence. For all purposes of justice we are on a level with the most privileged citizens of the Empire.

(3) There is no analogy between the United States and Australia in this respect. The American colonies fought for independence and won it; set up house for themselves; established their national judiciary, and it is inconceivable that when they did so they should cling to an appellate Court in England or any foreign country. England became a foreign nation to them. The situation, however, is very different with Australia. Australia is an integral part of the Empire. It is because it is so that there is no impropriety. The anomaly is in having a self-governing federation within a monarchy; but then the Empire, as I have said, is full of anomalies. It thrives on them.

(4) It is also said "that in the last generation or so, feeling has steadily hardened against the idea of appeals from the Dominions being dealt with by an external Court." That cannot, in my opinion, be said with fairness or accuracy as regards Australia. I know no evidence of it. Moreover, the Commonwealth has not yet lasted a "generation," nor can the Privy Council be rightly described as "an external Court"—geographically it sits outside Australia, but it is a Court of the Empire of which Australia is an integral part. There is only one thing that could make this Appeal really out of place, and that is if Australia, following the example of the United States, ceased to be within the Empire. If so, why

not avail ourselves, so far as we may without loss of dignity, of all or any of the Imperial instrumentalities?

The Imperial Navy is one of them—just as the Privy Council is. Are we to discard that as an "external navy"? Senator Lynch, in the Commonwealth Senate last year, according to a press cable, said, "We could not hold Australia for five minutes without the British Navy as our shield and buckler." That is true. Who is going to quarrel with that anomaly? Before Federation the same arguments might have been used to make the Supreme Court of the States final. South Australia did erect what was called a "Local Court of Appeals," but it was a ghastly failure.

(5) It is to be regretted the Privy Council appeal should be argued about as "a link of Empire." The expression is misleading. It is not a link. It is, I agree, a symbol of the unity of the Empire and that Australia is part of it. If so, how can there be humiliation in availing ourselves of an appellate Court of the Empire? There is no degradation in doing so. There is nothing derogatory to our autonomous dignity—nationhood, if you like.

In the words of the Australian delegates in 1900, "No patriotism was ever inspired by any thought of the Privy Council." Nor, on the other hand, is it any badge or mark of servitude or inferiority. It does not lessen by the estimation of a hair our dignity and complete self-government.

The continuance of this appeal does not keep the Empire together, nor would its abolition dissolve it. It is not a bond at all—much less one that chafes.

(6) The phrase "judicial equality" requires definition. The Commonwealth has its own judiciary—each State has its own. We administer justice to our own citizens. True, there is another Court of the same Empire to which limited and restricted appeals may go, but to that extent this other Court is part of our own system. It may be objected that is one more river to cross for the litigant—but it is our own doing. Australia decided how justice should be administered to her own people.

(7) Injustice is, I think, done to the Australian Labour Party in attributing to them the desire "to enable them to exercise a firmer control over the absentee capitalist," as "one of the principal motives" for adding to their platform the clause "The Australian High Court to be the final Court of Appeal." One hardly likes to speculate as to all that "desire" might be held to imply as to the impartial administration of justice. Nor is the unpleasant impu-

tation warranted—at least as to Australia—that " there is possibly some little ground for the suspicion sometimes expressed in Australia and Canada that the right of appeal to the Privy Council may work unduly in favour of what *The Sydney Bulletin* used to call ' John Bull Cohen '—that is to say, the English moneyed interest." I have never heard any such " suspicion " expressed in Australia. If it existed, it would be unfounded.

Last October the Australian Labour Party, in conference in Brisbane, redrafted their platform and included a clause that the High Court should have final jurisdiction in all Australian causes; but they also included clauses that the Senate should be abolished, that unlimited legislative power be given to the Commonwealth Parliament, and others which pointed to the substitution of unification —if not separation and independence—for Federation. From the extreme Labour point of view the motive for finality of the High Court is, in my opinion, not to improve the administration of justice so much as to obliterate what they think is a mark, if not a so-called " link," of Empire.

Recently at a meeting called to support the late Mr. Ryan, M.H.R.—who was looked upon as a *de facto* leader of the Federal Labour Party—in an appeal from a decision against him in a libel action against *The Hobart Mercury*, one of the speakers spoke of the Privy Council as " the highest tribunal in the world." I do not cite that as an individual opinion in itself of weight, but because I believe it expressed the feeling of Australia at large—and is a curious commentary on the Labour Party programme from their own ranks.

(8) It is not an opinion " generally held in Australia " that the Privy Council " has not proved a satisfactory tribunal in relation to its decisions on the Commonwealth Constitution." There is a considerable body of opinion that the High Court itself has not been always satisfactory in its constitutional judgments. The latest example is the case already quoted of *The Amalgamated Society of Engineers* v. *Adelaide Steamship Co.* But there is no infallibility in Courts. They may be right, and their critics, or even public opinion, wrong. It is quite true that representative judges from the Dominions and India were appointed to the Privy Council a good many years ago—about 1894. The appointments were rather by way of compliment and added little or nothing to the strength of the tribunal, at any rate as regards the judge appointed for Australia, who was only once in England—in 1897—when he

sat but was never in England or sat again. The Privy Council is a very different tribunal from what it was a good many years ago. It is at present a great judicial body—equal to the House of Lords —with one defect which should be remedied, namely: that only one judgment is delivered and the individual judges concurring or dissenting do not give their reasons as is the valuable and salutary practice in the House of Lords and all other Courts.

But the quality of the Court of Appeal is not the question now being considered. If incompetent or inefficient no one doubts it should be reformed or abolished. It is enough, however, to quote from Mr. Swift MacNeill, who in a letter to *The Times* last July, speaking of a reference to the Privy Council by His Majesty under the Act of 1833, said that " the decision of the Privy Council is of enormous moral authority," even although it might not be technically binding. Coming from Mr. Swift MacNeill, that is high praise.

(9) The desirability of one Imperial Court of Final Appeal taking the place of both House of Lords and Privy Council and including in its personnel judges from the Dominions, is an important question, but need not be discussed now, for such a Court would in principle be open to the same objections we are now concerned with.

(10) The suggestion of an ambulatory Privy Council peregrinating the Dominions periodically seems rather Gilbertian than satisfactory—not on the ground that it would be " an interference with the autonomy of the Dominions in judicial matters as a bond which chafed rather than a band which attached," but because the people of the Dominions, notably the Australians, have a keen sense of humour, and such a proposal would, I feel sure, be regarded as an unpractical pleasantry.

(11) The feeling in Australia on this question is not represented by the clause in the Labour programme.

Neither the people generally nor any influential, or even noticeable-section of them have given any hint, nor is there any evidence, that they wish the abolition, or further restriction of this appeal or to reverse their verdict of approval at the Referendum of 1898.

This question closely touches the commercial and trading classes. I am unaware of any wish or movement amongst them adverse to the present appeal—nor have the Chambers of Commerce, which exist in every capital city, or other organizations for protecting

trade declared their disapproval or taken any step towards putting an end to it.

It is also significant that no attempt has been made during the past twenty years in Parliament to exercise the reserved right of limiting the matters in which special leave to appeal may be asked. One would have expected at least some move in that direction if the "feeling against appeals is now stronger than ever."

The preponderant feeling and opinion of the legal profession are, so far as I can ascertain, distinctly against interference with the present system in Australia.

(12) It has also been said that there is a wide-spread feeling amongst the working classes of the Dominions that the complications and expense of the modern judicial system tell heavily in favour of the rich litigant as against the poor. This may or may not be so, but when it is said this "feeling" applies especially to the right of appeal to the Privy Council, I can only say I am not aware of it as regards Australia. The working classes are not the litigious classes—apart from the industrial tribunals. To them the Privy Council is at most a mere name—to the vast majority not even that. They do not care one straw whether there is an appeal to the Privy Council or not. Like Gallio of old, they care for none of these things.

The local and small debt Courts are the Tribunals with which they are acquainted. Appeals to the State Supreme Courts or the High Court do not interest them—much less the Privy Council.

(13) It is also said that the Privy Council is under the disadvantage of lack of local knowledge. Many think that is in most cases an advantage—that too great or intimate local knowledge, whether of persons or things—apart from the evidence—is not favourable to acceptable or unbiassed judgments, and that a Court which sits, so to speak, in Olympus—removed from the local influence not seldom associated with local knowledge—might be the more ideal tribunal. We are as yet, not geographically, but measured by population, a small people, and, not literally, but in a degree everybody—judges included—knows everybody else. If you regard localities and not persons, what local knowledge has the High Court of the Northern Territory or other parts, near or remote, of this vast island continent? It is well too that judges should be aloof from all that may disturb by a hairbreadth the even equipoise of the scales of justice. I do not believe either the presence of local knowledge in the case of Australian judges or its absence in the

case of the Privy Council affects the administration of justice in the least.

(14) A constitutional convention is likely to be convened before long—indeed a Bill was introduced just before Christmas—to consider the subject of amending the Constitution. I know of no responsible statesman or public man who suggests inclusion of the question of abolishing the present system of appeals to the Privy Council in the agenda.

(15) The States would, in my opinion, warmly resist being deprived of the direct appeal which now lies from the State Supreme Courts to the Privy Council. They value that right. It is frequently availed of. The dignity of the States would be affronted if it were taken from them.

(16) Expense is not a matter of principle. It would be unusual to make one Court final because it is cheap and exclude another because it is dearer. The argument of expense on the point of controversy seems self-destructive. Greater cost should be of itself a restriction on appeals. Even rich suitors think twice before incurring heavy costs, which therefore tend to discourage unimportant appeals. Cheapness, on the other hand, is inimical to the principle, *Interest reipublicæ ut sit finis litium.*

Further, appeals are restricted as to amount. Security is required and the Privy Council, before entertaining an appeal, have regard to the importance of the question involved. The argument from expense, if driven to its logical conclusion, would wipe out all appeals and make the Court of first instance final. It applies to litigation generally and every Court. Going to law, many people think an expensive luxury which only the well-to-do can afford. The heavy cost is no doubt a fruitful and just cause of complaint. Cheapen it by all means. The remedy on this head is clearly to reduce the expense, not to do away with the Court.

(17) The High Court in *The Federated Amalgamated Railway Service Association* v. *New South Wales Traffic Employees,* (1906) 4 C.L.R. 488, decided that the Commonwealth could not interfere with State Instrumentalities. The Commonwealth Government thought this wrong. Twice—in 1911 and 1913—they prevailed upon Parliament to pass Bills to amend the Constitution so as to give the power which the High Court decided they had not got; but the electors on each occasion, on referendum, rejected these proposals and refused the amendment. Then, with a changed judicial personnel, the question again arose in 1920 in the case

of *The Amalgamated Association of Engineers* v. *Adelaide Steamship Company*, already mentioned, when the decision of 1906 was reversed. This is of serious moment to the States—in fact, to both Commonwealth and States from the constitutional standpoint. Most people would have thought that was just the situation which fairly called for a reference to the Privy Council, but the Court of 1920 refused to certify so that an appeal might take place. Now the States have combined to appeal to the Privy Council against the refusal to certify or alternatively to invoke the exercise of the Royal prerogative to grant special leave. Whether this appeal will lie in either aspect may be doubtful. It will, at any rate, settle the question already referred to as to whether the discretion of the High Court to certify in such case is absolute or not. But three points clearly appear: first, one or other of the High Court decisions is wrong; secondly, the States do not undervalue the Privy Council Appeal, and hope to be able to avail themselves of it in this grave constitutional difficulty; and thirdly, the people will know whether their decision that the Commonwealth should not have the power sought is to be of no effect.

(18) Finally, the appeal does tend to promote legal uniformity within the Empire. The Common Law of England is the heritage and pride of American Jurisprudence—so it is of ours. So long as Australia endures a free English-speaking community it will not lose its faith in the Common Law. We are the children of the Mother-country. One must, I suppose, assume that the view on this subject put forward in Mr. Hall's book is serious, that the Common Law, if it ever was our heritage as children of the Mother-country, has fallen into disuse or vanished. It is hard to understand or appreciate this. No doubt the decisions of the Privy Council—like those of the House of Lords—will be quoted and followed whether these appeals are maintained or not, but it might make a difference in what one may term moral weight if, instead of being the judgments of what we may look upon as one of our own Courts, they were to be regarded as those of a foreign Court.

It is axiomatic that Australia can retire from the British Commonwealth when she pleases—England, as Mr. Bonar Law said, would not go to war to prevent it—but until she is insane enough to do so she may as well enjoy all the advantages of that proud and glorious association, including the privilege of free access in the furtherance of justice to a great tribunal of integrity, honour, and learning, maintained without cost to us.

Mr. Hughes, the Prime Minister of Australia, in his address during the opening debate of the recent Imperial Conference, said in effect that "there were some matters as to which it was best to leave well alone." That was wise and true. It may well apply to this question of the Privy Council Appeal as we have it, which, it is noteworthy, was not in the agenda or mentioned, as far as I know, at the Conference—unlike the subjects of foreign policy, armaments, the making of treaties and such like.

Let us therefore adhere to Clause 74—the Chamberlain Compromise. It works quite satisfactorily. To throw it into the melting-pot again gives no promise of any practical gain for Australia.

LEGAL TRAINING IN AMERICA.[1]

[*Contributed by* EDWARD JENKS, ESQ., M.A., D.C.L.]

ALL who have at heart the interests of legal education in England will be profoundly grateful to Mr. Reed, the author of this monumental work, and to the late Mr. Carnegie, whose far-sighted munificence encouraged, if it did not alone render possible, such a valuable and laborious piece of research. For if the conditions prevailing in England are in many respects different from those which confront reformers in the United States, there is, nevertheless, more than enough fundamental similarity in the circumstances of the two countries to enable English readers to gather valuable lessons from this thorough study of American methods. Indeed the author of the work himself, though he institutes no formal comparison between American and English Law Schools, and, indeed, seems to be not quite aware of some of the more recent developments of the latter, does not ignore the influence of English traditions on the early history of legal education in the States; and it is evident that he is seised of the main features of those traditions down to the middle of the nineteenth century.

Perhaps the first thought which strikes the mind of the reader of the work under review is: that the true analogy is not between English and American conditions, but between American conditions and those which prevail in the vast assemblage of communities which form the British Empire. For just as there is, despite occasional flourishes of rhetoric, very little that can accurately be termed "British Law," so there is not very much, though certainly more, that can strictly be described as "American Law." Doubtless the existence of a formal Constitution in the United States, with definite restraining power over the legislative and even the judicial activities of the individual States of the Union, has resulted in the slow growth of a body of doctrine formulated by the Supreme Court. Yet the jealously guarded "sovereignty" of the individual

[1] *Training for the Public Profession of the Law.* By Alfred Zantziger Reed. Carnegie Foundation for the Advancement of Teaching. Bulletin No. 15, 1921.

States has resulted in a diversity of laws within the Republic, almost, if not quite, as great as that which prevails in the British Empire. On the other hand, the geographical conditions of the Republic, and the quicker pulses of American life, have produced a unity of purpose, and, consequently, a uniformity of function, which seem, at present at any rate, to be unattainable, even if they were desirable, in the British Empire. Consequently, while the average English law student is, for the most part, interested only in the unified and comparatively homogeneous body of English law, the American law student, at any rate if he be ambitious (as most American students are), being aware of the almost boundless possibilities open to a lawyer with a reputation beyond the limits of his own State, cannot be content to remain in complete ignorance of the laws of the forty-eight other jurisdictions, with any one of which the ordinary claims of a large practice may on any day call upon him to deal. It is difficult for a reader who has little practical acquaintance with American conditions to speak with confidence of the extent to which the substratum of the English Common Law underlies the legal systems of the majority of the States of the Union, or to compare it with the effect produced by the exercise of the Royal Veto, the interpretative influence of the Judicial Committee, and the inherited tendencies of English-trained judges in the Crown Colonies and India. But it is evident that the problems which confront the guiding minds of such famous schools as those of Harvard, Columbia, and Yale, are far more complex than those with which the authorities of any English Law School, academic or professional, are called upon to deal.

With all allowance, however, for this important difference between American and English Law Schools and other forms of legal training, it is clear that many of the same problems arise in each, and, therefore, that American experience, with its far greater variety of experiment, its comparative freedom from tradition and precedent, its intense vitality and enthusiasm, must be of value to all English lawyers who really care for the welfare of their great profession. It is, therefore, with interest that we notice the appearance, in Mr. Reed's closely packed volume, of many of the questions which are constantly mooted in discussions on the methods of legal education in England. How far, if at all, should the State concern itself with the qualifications of lawyers? Is theoretical instruction in law possible, and, if so, to what extent should it be recognized or imposed as part of such qualifications? If theoretical

instruction is beneficial, what are the best methods of imparting it? By what persons or bodies should it be imparted? What standard of general education should be expected of a lawyer? Assuming some form of apprenticeship to be desirable, should it, or any other form of training, be made compulsory? If so, what relation should it bear to theoretical training? Examination, formal or informal, is of course no part of training; but, human nature being what it is, it is, to some extent at least, indispensable if any importance at all is attached to either academic or professional training, and it usually has a vital influence on the training which it is supposed to test. Should it be conducted by those who administer the training, or by some external authority? All these are questions with which those interested in English legal education are familiar. It is not possible, within the limits of a review, even to summarize the results of Mr. Reed's painstaking researches into American experience in all these problems. But one or two of his salient conclusions may be noted.

Mr. Reed, after an exhaustive survey of the different kinds of law schools to be found in the United States, ultimately resolves them (p. 414) into four classes: (i) schools which profess to qualify students for a degree in less than three years; (ii) "high-entrance, full-time" schools, where three years' course is regarded as a minimum for the curriculum, and a high standard of general education is exacted as a preliminary to admission; (iii) "low-entrance" schools with full-time courses, *i.e.* presumably where the legal curriculum demands at least three years' attendance; and (iv) "part-time" schools. This classification we may, perhaps, venture to simplify, especially as Mr. Reed himself is prepared to contemplate the disappearance of (i) and (iii), into the two broader types of (i) academic and (ii) professional schools. But it should be noted that there is a danger that English readers may misapprehend the meaning of Mr. Reed's epithet "part-time"; and this is only one of the many instances in which a fundamentally common language may mislead a foreign reader more completely than a wholly alien tongue. With Mr. Reed, a "part-time" school is one which caters largely for students who are not, at the time of attendance at any rate, in any sense lawyers, or even law students as most Englishmen understand the term. They may be students who hope at some future date to make a serious effort to qualify as members of the legal profession, or they may be merely business men and women who find a smattering of certain legal topics useful in their various callings. In any case,

these students are mainly engaged, for the time being, in other pursuits; and it is not difficult, therefore, to understand the disfavour with which Mr. Reed, as a man in earnest about education, regards them. Such institutions resemble rather the "evening classes" maintained by local authorities in England, which profess to give a certain amount of instruction in unrelated legal or quasi-legal subjects, than what is ordinarily understood here as "law schools"—indeed, Mr. Reed himself, probably following American usage, sometimes speaks of them as "night schools." It is not difficult to understand the political and social conditions which create a demand for such teaching, both in America and England; but it is a little unfortunate, for English readers, that Mr. Reed's attitude towards them should have, apparently, diverted him from what, to such readers, would have been a more interesting line of inquiry, viz. how far is it possible, or desirable, for a law student to attempt to carry on a serious study of the theory and principles of law, concurrently with an apprenticeship in the practical work of a lawyer?

There is, indeed, something almost startling to an English lawyer in the cavalier manner with which such an earnest and broad-minded inquirer as Mr. Reed dismisses apprenticeship as a real factor in legal education; and we can only assume that he regards it, in the light of accepted American opinion, as hardly worthy of discussion. After a very brief survey of the subject, he says (p. 400): "In general the attempt to rely upon a law office as an efficient educational factor has brought only disappointment"; and he fortifies this view (p. 400 n.) with a trenchant quotation from a distinguished jurist (the late Mr. Joseph Choate), which, despite the great personal reputation of its author, does not quite carry conviction.

Now it may safely be said that, not only in England, but in Scotland and Ireland, it is the firm conviction of the great majority of lawyers that a purely theoretical training in law is insufficient to produce, not merely a qualified practitioner, but a great lawyer in any sense of the term. Law is a science which concerns the conduct of human beings, individual and associate, in their relations to one another, just as much as medicine is a science which concerns their bodies. And just as no medical student can become a really great physician or surgeon, or even a capable practitioner, by the study of theory alone, albeit fortified by experiment in the dissecting-room, so no law student can, in the English view, become either

a sound lawyer or a capable practitioner by the study of textbooks or attendance at lectures and classes alone, even with the useful assistance of an analysis of leading cases, which are the contents of his dissecting-room. There is, indeed, a possibility (to which earnest attention should be given) that the future development of "Poor Persons" practice may in time provide for law students something analogous to the hospital work of the medical student; and the fact that Legal Aid societies are liable to abuses is no more an argument against the educational and social possibilities of such institutions, than is the fact that hospitals are liable to similar abuses. But that is a question for the future rather than the present. The immediate questions for those who are interested in legal education in England are: How far, if at all, is it necessary to supplement apprenticeship or practical training by teaching deliberately aimed at giving the law student a comprehensive view of his science? If such teaching is desirable, by whom, when, and how should it be given?

The value of apprenticeship being admitted, it is easy to point out its imperfections. The inevitably sporadic and casual character of the practitioner's work renders it impossible for the apprentice to be sure of coming into personal contact with more than isolated and fortuitous illustrations of legal principles. A man who is really in earnest in making the most of his opportunities may spend a year as a pupil, and even many years as a "devil," in the chambers of a busy barrister, or as an articled clerk in a flourishing solicitor's office, and yet at the end be blankly ignorant of whole chapters of English Law, if he has resorted to no other means of education. That he will, if he is apt and appreciative, have learnt priceless lessons in the art of handling cases, in acquiring habits of industry and method, goes without saying. But he will not, if he has done nothing more, have become a well-equipped lawyer. Again, there is no guarantee—there can, in the nature of things, be none—that his master will really have done his duty by him, even if we exclude from that duty the element of conveying instruction in legal theory —an element which, in the case of a busy practitioner, is obviously impossible. That is one of the inevitable weaknesses of the apprenticeship system—a weakness which has, probably, done more than anything else to bring the apprenticeship system into disrepute. But, in fact, the inadequacy of the apprenticeship system stands confessed, even in this country which believes in it, in the establishment, as a condition precedent to qualification in both

branches of the legal profession, of severe examinations in the theory of the law. If we can trust the apprenticeship system to turn out properly-equipped lawyers, why have examinations at all?

Another very remarkable fact appears to emerge from Mr. Reed's volume. Though he does not seem to have made any attempt to estimate the total number of law students at any given time in the United States, the statistics which he gives as to the attendance at Law Schools are suggestive. It appears that, on the eve of the war with Germany, there were no less than 22,203 students attending the various schools included in his investigations, while the schools themselves numbered 140. Such figures are calculated to arouse envy in the mind of the English teacher of law. For if we proportion these figures to the population in the two countries—England (including Wales) and the United States—the corresponding number for this country should be about 8,000, which is probably more than double the actual figure. Doubtless the geographical differences between the two countries account largely for the greater numbers of the American schools (out of all proportion to the numbers of the students); but the greater number of students, in relation to the population, seems to make it clear that the American law student sets a higher value on systematic law teaching than his English cousin. And the American law student is an extremely shrewd person, by no means willing to submit himself to the discipline of a teacher, or to pay the fees for his courses (as to which Mr. Reed seems, unfortunately, to give us little or no information), unless he gets good value for both.

The English teacher of law is thus irresistibly brought up against the question whether his methods are as efficient, or (which is not quite the same thing) as attractive, as those of his American colleague. And here there is much in Mr. Reed's volume which will give him food for thought. In the first place, he will be startled by the statement to which Mr. Reed commits himself (p. 377), to the effect that "the type of institution that depends upon lectures for a substantial portion of its curriculum has become extinct." This is a sufficiently astonishing statement for an English law teacher to face; and it is not until he realizes the reasons which led Dean Langdell to revolt against the lecture and to substitute for it his famous "case method," that he begins to recover his equanimity. A special study of the famous Harvard system inaugurated by Dean Langdell has appeared in an earlier Bulletin (No. 8) of the Carnegie

Series ; and it would be out of place, in a review of Mr. Reed's book, to attempt to describe it. But it does appear very clearly from Mr. Reed's pages, first, that the system arose from a state of things which has no parallel in the study of English law, and, second (though perhaps with less fullness), that the conditions which make it possible and successful in America do not exist in England. The distinction between these two factors is not always grasped ; but it is essential.

In the first place, it seems clear that the prime motive of Dean Langdell's historic revolt was the practical impossibility of reconciling, even approximately, an enormous mass of unco-ordinated decisions of tribunals of nominally equal authority, each of which was binding (of course subject to appeal) in a limited area only of the Union, and that, consequently, Langdell was faced with the alternative of teaching only law as it was accepted in Massachusetts, or essaying a task which he knew to be impossible of fulfilment. The first alternative ran counter to his great and praiseworthy ambition to make his school a resort for the most earnest and brilliant law students throughout the States ; against the second his high sense of honour and truth revolted. So Langdell set himself to devise a system which should instil into his students the essence of the common law, or, as Mr. Reed seems to put it, of all law, and thus enable them, not merely to assimilate with ease in after-life the local variations prevalent in the jurisdiction in which, for the time being, they should be engaged as lawyers, but also to exercise a wholesome and critical influence, whether as judges or practitioners, on the administration of that law. In other words, he and his followers have aimed at making their schools "national," rather than "local," nurseries of lawyers. This is, of course, a worthy ideal ; and Mr. Reed must pardon us if we decline to accept it as coinciding with a view which he, somewhat strangely, asserts off-hand (p. 378) as the philosophy of the "historical school of jurisprudence," viz. that law is "a fatalistic unfolding of inevitable tendencies." [1] There is, of course, no parallel difficulty before the English teacher of law. In a country where an ordered hierarchy of courts has for centuries established an essential unity of authority, an English teacher, though he may find it hard to reconcile some minor discrepancies, finds, if he is a capable man, no insuperable

[1] On the other hand, we cordially agree with Mr. Reed in repudiating (p. 370) the criticism which condemns the "case method" as tending to foster a blind search for exact precedents.

difficulty in disentangling, from the comparatively limited material of reports of decided cases, the essential principles of law and equity, and setting them before his students.

In the second place, there are differences, in the national temperament and circumstances of the two countries, which may well cause the English teacher of law to hesitate before scrapping an existing system for the method of Langdell. For one thing, it would appear that the expounding of statute law is almost ignored in American Law Schools, at any rate in those which follow the "national" ideal. Such a course may, again, be inevitable in America, with its forty-eight co-equal jurisdictions of geographically limited authority and feverishly active legislatures. In England no Law School which adopted it could exist for a year. Statute law, with all its imperfections, bulks so largely in the English system, is so interwoven with the texture of English law, that an attempt to present any branch of English law without constant reference to it, would be like an attempt to draw a descriptive map of England without showing the great industrial towns which, however much they may be assumed to disfigure the older country-side, have, in fact, a very substantial influence on it. In England, Parliamentary statutes are, both in theory and fact, as integral a part of the law as judicial precedent; and a system of legal education which pretended to ignore them would be not merely imperfect, but essentially misleading.

Again, while generalizations from alleged national characteristics are admittedly dangerous, it may be seriously questioned whether the average English law student would be likely to profit by an application of the "case method" of teaching. Doubtless, the English mind is essentially inductive; but it is also, in spite of its independence, essentially reverent of tradition. And although the study of collections of "Leading Cases" had a considerable vogue a generation or two ago, it is a significant fact that, except in the way of aids to formal teaching (a use which Mr. Reed, quite rightly, regards as the very antithesis of the Langdell method), they seem to have experienced a considerable decline in popularity during the last twenty years. Is it possible that Mr. Reed, in his condemnation of the "lecture," is unconsciously assuming (doubtless with some justification in view of the facts) that a "lecture" necessarily consists of a dogmatic statement of rules, intended to save the lecturer's hearers from the trouble of working out the application of principles for themselves—in fact the dictation of a

"piece" to be committed to memory and reproduced, with as much relevance as possible, in the examination-room? No English law teacher of repute would hesitate to condemn such a performance as heartily as Mr. Reed. The true function of the lecture is to suggest, not to dictate—to give the hearer an idea of the work which lies before him if he means to master a given topic, to warn him against pitfalls, to emphasize the relative importance of the different aspects of his subject, to sketch the background from which the formal rules of law emerge, and the process by which they emerge, and the social causes which produced them. If such an effort is supplemented (as it ought invariably to be) by tutorial discussion in which misunderstandings can be cleared up, by cross-questioning of tutor and student in a small class whose members learn from one another as well as from their official teacher, the student can then turn to his original sources, with the reasonable confidence that he will neither waste his time in unnecessary labour, nor absorb wrong beliefs which it may take him years to eradicate. The belief in the wholesome effect of a "sink or swim" treatment for the average student is really a survival of the Puritan creed that unnecessary suffering and difficulty are themselves stimulating and refining influences. To the exceptional man they may be. In the average student they merely create a feeling of despair, followed, usually, by a resort to "dope" in the form of "cramming."

Indeed, as it seems to us, Mr. Reed himself admits, at least by implication (p. 412), that the "case method" of teaching is only applicable, even in the States, to a select minority of specially fortunate or well-equipped students, and that the great majority of students use the "textbook" system. Unfortunately, he does not appear to explain exactly how this system works; and it may be that we should do him (and American Law Schools) injustice in assuming that the students who follow this method are set to read certain portions of a given textbook, which are then expounded in class by the teacher, and upon which the students are catechized. But if this assumption is correct, then we share heartily Mr. Reed's condemnation of the system, which is even worse than the fancy portrait of the lecture which we seem to see beneath Mr. Reed's treatment of the lecture method as out of date. In spite of the fact that the best English legal textbooks have been written by teachers—by Blackstone himself, Dicey, Anson, Pollock, Maitland—and are, in fact, mainly reproductions of their lectures, the text-

book suffers from the lack of personality which only the oral teacher can supply. It often fails to answer the very questions which the reader wants to put. It cannot make allowance for individual differences and temperaments. And the professional textbook is positively dangerous in the hands of the student; for it is very largely concerned with elucidating exceptional cases, and thus is apt to lose sight altogether of undisputed principles. In any event, to handle a textbook as an inspired volume, the interpretation and absorption of which are the main objects of the student's work, is to treat the student as a schoolboy, and to keep his mind in perpetual serfdom. We believe that every great textbook writer would feel indignation at the news that his work was being treated in this way.

It may perhaps have seemed a little unfair to Mr. Reed and the Foundation which has rendered his work possible, that these pages should have treated that work rather as a basis of comparison between American and English conditions and problems, than as a simple exposition of the state of legal education in the Union. But in truth, regarded as the latter, it is almost above criticism. We have ventured to hint at one or two matters upon which we should have liked further information. But it would be impertinent in an English reviewer, without first-hand acquaintance with American conditions, to venture to question the accuracy or impartiality of a work which, to judge by all appearance, is a masterpiece of thoroughness and orderly arrangement.

THE RAILWAYS ACT, 1921.

[*Contributed by* Sir Lynden Macassey, K.B.E., K.C.]

One of the most important matters of post-war reconstruction in every country is rehabilitation of its railway system or systems. The prosperity of any country's railways is primarily dependent upon the prosperity of the nation's trade and commerce. During the war, not merely in belligerent countries, but also in those of neutrals, railways ceased to be operated upon a normal commercial basis, and where they were not national railways were either taken over by the Government of the country or else heavily subsidized out of national funds. At the same time, all operating expenses, especially in the matter of wages and materials, mounted rapidly. The result was that the end of the war saw all countries confronted with the problem of restoring their railway systems, and of placing them in a condition as far as possible approximating to pre-war efficiency. In countries where railways have been nationalized the problem is a different one from that in countries where railways are owned and worked by commercial companies, and those countries whose railway systems have been devastated as a result of military operations are faced with a further problem peculiar to themselves. It is not within the scope of this article to describe the peculiar nature of the problem in the principal countries of Europe; that will be found stated with clearness and brevity in *Reconstruction in Europe—Section Seven, September 7*, 1922.[1] The intention of this article is to describe in outline the railway reconstruction legislation in Great Britain in regard to which there seems to be considerable misapprehension outside that country.

In 1919 practically all the English railways were in the possession of the Government under Section 16 of the Regulation of the Forces Act, 1871, and had been in that condition since August 4, 1914. The wages of railwaymen had been greatly increased under Government orders. If one takes the rate of railwaymen's wages

[1] Published by *The Manchester Guardian* (Manchester).

for a normal week in 1914 just before the war as 100, the rates of wages had increased by the middle of 1919 to about 230. Railways were, therefore, being worked at a heavy commercial loss, but this did not appear, as the Government was, in respect of its possession, paying to each company a sum of money per annum approximately equal to the amount of the Company's net earnings for 1913.

One of the Government's first measures of post-war railway reconstruction was to pass the Ministry of Transport Act, 1919. The Minister of Transport immediately proceeded to increase rates and charges—none had been increased at all during the war—so as to reduce the charge on the national Exchequer. The Act provided that the Minister of Transport should, unless Parliament otherwise determined, be in possession of and have power to control railways of which possession had been taken, for a period of two years after the passing of that Act, namely, until August 16, 1921, " with a view to affording time for the construction and formulation of the policy to be pursued." The Unions representing the railway operatives and the railway clerks pressed strongly that this policy should be nationalization, but the Government declined to nationalize, and as an alternative passed the Railways Act, 1921. That Act provided for three main purposes ; its enactment is a landmark in the history of English railway legislation.

It provided firstly, " with a view to the reorganization and more efficient and economic working of the railway system of Great Britain " that all the railways of England, Scotland and Wales should be constituted into four great groups, namely, the Southern, the Western, the North-Western Midland and West Scottish, and the North-Eastern, Eastern and East Scottish ; secondly, for the adoption of an entirely new basis of rates and charges ; and, thirdly, for the creation of a great conciliation machinery for the settlement, as between railway companies and their employees, of all questions relating to hours of work, rates of wages, and conditions of employment.

Part I of the Act, " Reorganization of Railway System," cannot be said, so far as its grouping provisions are concerned, to mark the introduction of any new principle. The Stephensons, the greatest railway pioneers, always maintained, according to tradition, that competition meant combination, and they were right. But in the early days of railway enterprise at the beginning of last century, competition was the basis on which the whole railway organism

was sedulously developed by the Legislature. Economic conditions, however, soon proved the absence of any real efficacy in competition as a factor operating for the protection of the public, so in the fifties there began a strong movement towards the amalgamation of small companies into larger groups. This perfectly natural and inevitable result of the progressive evolution of industry never received, unfortunately, much sympathy from Parliament. In the year 1854 the first Railway and Canal Traffic Act was passed really to assuage popular apprehension of various railway amalgamations which were proposed. This Act provided that every railway should afford both for local traffic and through traffic all due and reasonable facilities. It cannot be said that the Act restored equanimity. When, under the stress of economic pressure, further proposals for amalgamation were from time to time submitted to Parliament, the most lively suspicion was always aroused in the minds of traders and the public, and many important Select Committees of Parliament and Royal Commissions were appointed to investigate how the community could be protected.

The Regulation of Railways Act, 1873, with its well-known provisions for through rates, evidenced a further attempt by Parliament to mitigate the real or imaginary dangers thought to lurk inherently in amalgamations. But in spite of the provisions of the Railway and Canal Act, 1854, and of the Act of 1873, and of the Railway and Canal Traffic Act, 1888, the difficulties of passing a private Bill through Parliament to effect a railway amalgamation of any importance were very great. Such a Bill always roused the fears even of the Government, and was used by trading organizations as an opportunity to extract all kinds of concessions, many quite unjustified and unreasonable, from the companies seeking to effect the fusion. In fact, so heavy was the burden of obligations which a company was ordinarily compelled to assume as the price of doing what the Railways Act of 1921 now says ought to be done, that it effectually damped the enthusiasm of the railway companies from attempting any large amalgamations. Had the Legislature during the last seventy years shown the least encouragement to railway companies desiring to consolidate individual systems into large groups or evinced any willingness to safeguard them from unreasonable demands by traders as the price of such amalgamation, there is no question whatsoever that the railway companies of Great Britain would long ago, on their own initiative, have effected a very large proportion of the grouping which they are now statutorily

obliged to carry out by the Act of 1921. Whether this grouping is going to result in important savings through economy of operation, which was one of the Government's chief arguments in its favour, is somewhat open to doubt. To this question Mr. R. L. Wedgwood, C.B., C.M.G., General Manager of the North-Eastern Railway, in a most able article in *Reconstruction in Europe—Section Seven*, p. 400, refers as follows:

> It is unfortunate that the "grouping" of the railways, which is merely one feature of the Act, should have come to bulk so large in public discussion, and that the issue should so frequently be narrowed down to the single question, "What savings will be made by grouping?" To the present writer that question appears both unanswerable and unimportant. Unanswerable because the only savings that really count must be spread over years, and cannot by any ingenuity be isolated; unimportant, because "savings," to be permanent, can only flow from a sound basic organization, and are entirely dependent upon the establishment of the industry in a satisfactory relation to the trading public on the one hand, and to its employees on the other. These relations are fundamental, and, if they are neglected, "savings" realized in one year will be wasted in useless friction in the next, or swallowed up in the loss due to the progressive discrediting of the industry.

The second great feature of the Railways Act, 1921, is the new basis it provides for rates and charges. In this respect its effect is as follows. Since the years 1891 and 1892 each railway company has been entitled to charge rates and make charges not exceeding the maximum rates and charges specified in the Schedule to the particular Railway Rates and Charges Order Confirmation Act passed in accordance with the provisions of the Railway and Canal Traffic Act, 1888, and applying to the particular company. In other countries where the basis of railway rates and charges takes the form of liberty to the company to charge up to, but not exceeding, a specified maximum, the company has complete liberty, apart from prohibition against discriminatory charges, to charge up to the maximum. When, however, the Rates and Charges Orders in 1891 and 1892 came into operation, and had the effect of reducing, in some cases materially, many of the existing charges of the railway companies, a number of the companies proposed to put up their other charges to the new statutory maximum by way of offset. This led to an outcry in the country and panic legislation in Parliament. There was passed by Parliament the Railway and Canal Traffic Act, 1894, which provided that if any railway company should, after December

31, 1892, directly or indirectly increase any rate or charge, and complaint was made, it should lie on the company to prove before the Railway and Canal Commission Court that the increase of the rate or charge was reasonable. This Act in practice really tied all companies down to the amounts of the rates and charges in operation on December 31, 1892, as their virtual maxima. If they increased a rate they had to prove, not the logical issue, that the total rate as increased was reasonable, but that the amount of the increase was reasonable—a very different question—which led to ridiculous results. Assuming that the company could show that the total amount of the increased rate or charge was fair and reasonable, having regard to the services rendered and accommodation afforded by the company, ordinary people would think that that was sufficient to establish the equity of the increase; not so the Act; it insisted on proof, not of the reasonableness of the total charge, but of the increase. Therefore, companies had to prove, in effect, that as between the time that the original rate was put into operation and the time when the increase was made, working expenses in respect of the particular traffic in question—not on the railway as a whole—had increased by at least as much as the increase in the particular rate complained of. This was an onus of proof that no railway company could possibly discharge in any but the simplest of cases. All this legislation is now swept away, and, following the American practice, railway companies are to be entitled to charge reasonable rates, leaving it open to any trader to complain before the Railway Rates Tribunal, a new Court set up under Section 20 of the Act, that the rate is unreasonable.

The standard of reasonableness to be adopted by the Railway Rates Tribunal, in fixing, in the first instance, the standard charges which the companies are to make in the future, is laid down by Section 58 of the Act. That Section includes the following provisions:

58. (1) The charges to be fixed in the first instance for each amalgamated company shall be such as will, together with the other sources of revenue, in the opinion of the rates tribunal, so far as practicable yield, with efficient and economical working and management, an annual net revenue (hereinafter referred to as the standard revenue) equivalent to the aggregate net revenues in the year nineteen hundred and thirteen of the constituent companies and the subsidiary companies absorbed by the amalgamated company, together with:

(*a*) A sum equal to five per cent. on capital expenditure forming the basis on which interest was allowed at the end of the period

during which the constituent companies and subsidiary companies were in the possession of the Government; and

(*b*) Such allowance as may be necessary to remunerate adequately any additional capital which may have been raised or provided in respect of expenditure on capital account incurred since the first day of January, nineteen hundred and thirteen, and not included in the expenditure referred to in the last preceding paragraph, unless it can be shown that such expenditure has not enhanced the value of the undertaking; and

(*c*) Such allowance as appears to the rates tribunal to be reasonable in respect of capital expenditure (not being less than twenty-five thousand pounds in the case of any work, and not being capital expenditure included in paragraph (*a*)), on works which enhance the value of the undertaking, but which had not at the beginning of the year nineteen hundred and thirteen become fully remunerative:

Provided that, in determining the sum which charges will, with efficient and economic working and management, yield, the tribunal shall, with a view to encouraging the taking of early steps for effecting economies in working and management expenses rendered possible by or in anticipation of amalgamation, take into consideration the economies effected by such steps already taken, and shall make such allowance in respect thereof as the tribunal may consider fair and equitable to an amount not exceeding thirty-three and one-third per cent. of such economies.

The dominant conception in the theory of English railway rates which culminated in the Rates and Charges Orders of 1891 and 1892 is peculiarly interesting and typically British. Perhaps the best description of it from the legal point of view is that contained in the well-known judgment of Mr. Justice Wills in *Hall & Co.* v. *London Brighton and South Coast Railway Co.*, 15 Q.B.D., at p. 536. This learned judge truly says: "This notion of the railway being a highway for the common use of the public, in the same sense that an ordinary highway is so, was the starting point of English railway legislation." Accordingly, we find that the first railway Acts that were passed, entitled the public to bring on the railway their own engines and carriages provided they were approved by the railway company, and the owners paid certain specified maximum mileage tolls which were levied on each passenger and on each ton of goods for the use of the railway road. The whole underlying notion of a toll-charge was borrowed from the earlier Canal Acts. But soon companies obtained statutory authority themselves to supply

haulage power, and to make in respect of its provision a charge of such amount as they thought fit. Later, companies, in addition to supplying the road and the locomotive power, obtained statutory authority to supply the carriages and the trucks, and convey the traffic themselves, and in respect thereof to make a reasonable charge for carriage. It was not long, however, before experience proved that it was impracticable for persons to use the railway as a highway and to bring their own locomotives and carriages upon it and demonstrated that only the owning or working company could really be the effective carrier on the railway. That led, about the year 1843, to a standard form of charging power in railway private Acts. For some four or five years after that date railway private Acts authorized railway companies to charge (1) a mileage road toll, *i.e.* for the use of the railway ; (2) an additional mileage toll for locomotive power when supplied by the company ; (3) an additional mileage toll for transport in carriages or waggons of the company. Under this form of section a company itself acting as a carrier would be entitled to make a charge not exceeding the aggregate of road toll plus locomotive toll plus carriage or waggon toll. After 1845, a new system of charge was adopted by the Legislature, and what was known as " the Maximum Rates Section " was inserted in all railway private Acts. That clause provided that a company should be entitled to charge (1) a road toll ; (2) a locomotive power toll ; and (3) a carriage or waggon toll, and that when the company itself acted as a carrier it should not be entitled to charge more than certain specified mileage rates which were somewhat lower per mile than the aggregate of the three tolls, the theory being that when the company acted as a carrier it was in a position to do the work of transport more cheaply than an outside carrier using the railway, and so make a lower charge. Up to 1891–2, this was the standard form of charging power on English railways. What the Rates and Charges Orders of 1891 and 1892 effected was to group the railways' own classification of merchandise into eight statutory classes, and to specify new maximum charges for each of those eight classes, and to give the railway companies express power to make, as they were doing, terminal charges.

In early days it was the standard practice in certain districts and on certain railways for large firms of carriers to construct, adjoining the company's railway, their own goods stations in which they loaded up into their own waggons the goods collected by them for transit by railway, afterwards hauling out the waggons to the point

of junction with the company's railway of the siding into the goods station. The railway company merely conveyed the traffic on the railway from the point of junction and undertook none of the carrier's duties of collecting or delivering the traffic to or from the goods station or of loading or unloading the traffic therein or clerkage. This remains in law to-day an integral part of the basis of English railway rates and it will be interesting to see to what extent, if any, it will be modified under the Railways Act of 1921. When, for example, a trader owns a private siding connected with a railway station-yard, he may not be charged under the Rates and Charges Orders anything in respect of the provision by the company of the railway station or of services rendered by the company at the station to station traders; he may only be charged for "conveyance" on the company's railway together with such additional amounts as may represent a fair charge for any special services rendered to him as a sidings trader. The question then is where does "conveyance" begin and end upon the railway? That confronts the Courts with the very controversial question of deciding at what point, assuming the goods station were owned as in old days by a private carrier and the railway company merely acted as conveyer to the entrance to the goods station, the company would actually have dropped the traffic. Conveyance in law runs up to but stops at that point. It is naturally a problem founded largely on conjecture and one most difficult for the Courts to solve, and yet that is a task which the Courts must undertake (see *Foster* v. *Great Eastern Railway Co.* [1920], 2 K.B., 574).

The Railways Act of 1921 provides for a new classification of merchandise and for the fixing of standard charges for the carriage of merchandise so classified. A Committee called the Railway Advisory Committee was appointed under Section 21 of the Ministry of Transport Act, 1919, and that Committee has been engaged for some time upon the settlement of the new classification of merchandise which is now practically completed. When it is finally approved by that Committee, then, under Section 29 of the Act of 1921, it will replace the old classification of 1891–2. The outstanding feature of the new classification is that general merchandise will be divided into some 21 different classes. There will also be separate classifications for (1) dangerous goods and (2) live stock by merchandise train, and (3) perishables and (4) non-perishables by passenger train. This is in order to approximate as far as possible to the tariff system

in operation in continental and other countries. The scheme of standard charges is an entirely new arrangement so far as Great Britain is concerned. Formerly a railway company was entitled to make one charge for the transport of traffic, and provided the total of such charge did not exceed the aggregate of the several amounts legally payable in respect of the services afforded and accommodation provided, the charge was legal. The total charge was not, however, built up in practice by the companies allocating a specific sum against each item of accommodation or service. It was such a total charge as the traffic was thought able to bear, and traders who desired to see whether they were being charged for accommodation or services not in fact provided could only obtain "dissection" or "disintegration" of the charge into its constituent elements by making the necessary application under the provisions of the Railway and Canal Traffic Acts. When applications for subdivision were made the railway companies naturally were driven to all kinds of empirical methods of disintegration, and inevitably so because the total charges had not been built up in the first instance. In fact, the Railway and Canal Commission Court, *faute de mieux*, were frequently driven to disintegrate the total charge on what is called the "Pidcock principle" (see *Pidcock* v. *M. S. & L. Railway Co.*, 9 R.C.T.C. 45) by ascertaining first what were the ingredient services and accommodation actually provided, secondly, what would be the total authorized maximum charge, if the full legal charge for each ingredient of accommodation and service were made, and thirdly, then assuming that the total actual charge made by the railway company was built up of actual constituent charges in the same proportion to the total actual charge as the full legal charge for each ingredient of accommodation and services bore to the total authorized maximum charge. Now, however, a schedule of standard charges will be constructed by the Railway Rates Tribunal following the form set out in the fourth Schedule to the Act of 1921, which will state for each class in the classification the standard charge for (1) conveyance per mile; (2) station terminal accommodation and services; and (3) service terminals, for example, loading, unloading, covering and uncovering. Thus any trader, by finding in what class of the classification his goods are placed, can calculate for any journey the exact charge the railway companies are entitled to make for the transport of his commodity. This follows very closely the system in operation in foreign countries.

Uniform standard charges throughout a district assumes uniformity of economic circumstances; that, however, seldom exists. All kinds of conditions, for example, coastwise competition, canal competition, the competition between big centres of home production or consumption, competition with foreign countries, reflect materially upon the charges which a railway company is in a position to make. It would be a serious matter for the trade and commerce of any country if its railways were prohibited from making anything but standard charges. The Act of 1921 therefore provides that, subject to certain governing conditions, a company may make "exceptional" charges provided they are not less than 5 per cent. or more than 40 per cent. below the standard rate which is chargeable. Examples exist abroad of countries which tried to enforce standard uniform charges on their railway systems, but were absolutely compelled under the stress of economic circumstances to abandon the attempt. Under present conditions something between 70 and 80 per cent. of the general merchandise traffic of Great Britain is carried at exceptional rates, that is to say, rates below the class rate which is, or approximates to, the full legal maximum charging powers. One further effect of the Act of 1921 is to sweep away the Railway and Canal Traffic Act, 1894, with its complicated and impracticable burden of proof.

Another important matter for which the Act of 1921 makes new provision is to provide for the settlement by the Railway Rates Tribunal of the standard conditions of carriage which shall apply throughout Great Britain to the carriage of mineral, general merchandise, and livestock traffic by merchandise or passenger train, at ordinary or owners' risk rates.

Mr. R. L. Wedgwood, who was closely associated on behalf of the railway companies with the negotiations between the Government and the railway companies which led to the Act of 1921, thus describes the position in *Reconstruction in Europe*, p. 400:

> The rates provisions of the Act, coupled with the institution of the Rates Tribunal, may fairly be said to mark a new epoch in the relation of the railways with the trading public. The dead hand of the 1894 Act is removed; rates and fares are to be capable of continuous adjustment on a basis which will yield a fair profit; and this adjustment is subject to the control of a permanent expert tribunal working on business lines. The provisions with regard to the fixing of rates are no doubt open to objection; the burden of railway charges is felt most keenly in periods of bad trade, and is least galling when times are prosperous; yet the Act, rigidly interpreted, would increase the burden in the first

instance and lighten it in the second. The objection, however, is really one of detail; it is recognized that in the long run rates must rise or fall with the general level of expenses, and one may trust to the common sense of the railways and of the business community not to use this recognition for the purpose of securing immediate and temporary advantages.

The third great purpose of the Act is to provide conciliation machinery for the adjustment of all disputes between railway companies and their railway operatives and clerks. Government policy in Great Britain in regard to industry generally continues the policy which of recent years has been voluntarily applied in the chief national industries, that of settling all questions in relation to working hours, conditions of employment and rates of wages by negotiation between the organizations representative of the employers and those comprising the workpeople. That this policy should be extended and applied as widely as possible was the strong recommendation of the Committee usually known as the Whitley Committee appointed in October 1916. While in other industries the constitution of such joint committees is a matter of agreement, so far as the railway industry is concerned the Act of 1921 has put it on a statutory basis. Two sets of machinery are constituted, firstly, the Central Wages Board, which is to be a central wages board representative of railway managers and railway employees, and is to be the tribunal to which all questions of wages, hours and conditions are referred in default of agreement between the company and the unions. From the Central Wages Board an appeal lies to the National Wages Board representative not only of management and of unions, but also of the users of railways, with an independent chairman appointed by the Minister of Labour. The decisions of either Board are not enforceable by any process of law. Inside each railway group conciliation machinery, consisting of district and national councils with a railway council for the whole of the railway, is set up. The writer perhaps cannot more succinctly describe the nature and the purposes of these councils than in the following words: [1]

The Act provided that councils on the lines of the Whitley Councils should be established for each railway company on the general basis of schemes to be prepared by a committee consisting of six representatives of the General Managers' Committee of the Railway Clearing House and

[1] *Labour Policy—False and True*, p. 168. (London: Thornton Butterworth, Ltd., 1922.)

six representatives of the National Union of Railwaymen, the Associated Society of Locomotive Engineers and Firemen, and the Railway Clerks' Association. These schemes, which have now been prepared, provide for: (1) local consultation; (2) local departmental committees; (3) Sectional Railway Councils, and (4) Railway Councils. At stations or depôts with a number of employees in a department or group of grades less than seventy-five, such employees are to be entitled to appoint representatives to discuss local matters with the company's local officials. At stations or depôts where the number exceeds seventy-five, a committee is to be set up, consisting of not more than four elected representatives of the employees in the department or group of grades concerned, and not more than four representatives of the company. The objects of the local committee are to provide a recognized means of communication between the employees and the local officials, and to give the employees a wider interest in the conditions under which their work is performed. A local committee is to discuss: (*a*) suggestions for the satisfactory arrangement of working hours, breaks, time-recording, etc.; (*b*) questions of physical welfare; (*c*) holiday arrangements; (*d*) publicity in regard to rules; (*e*) suggestions as to improvements in organization of work, labour-saving appliances and other matters; (*f*) investigation of circumstances tending to reduce efficiency; and (*g*) the correct loading of traffic to ensure safe transit and the reduction of claims. Before a matter is discussed by a local committee it must first be submitted by the employees to the officials of the company in the ordinary manner, but, failing a satisfactory reply within fourteen days, it may be reported to the secretary of the employees' side of the committee. The company in the same way must exhaust the constitutional machinery.

Sectional Railway Councils will consist of not more than twelve elected representatives of the employees, and not more than twelve appointed representatives of the company, and not more than five Sectional Councils are to be established on any railway. Each side will have its own secretary, who will have the right to take part in the proceedings. If one takes a railway on which the whole staff of the company is divided into the usual five sections, viz., (1) clerks, station-masters, supervisors, etc.; (2) locomotive men; (3) traffic department men; (4) goods and cartage staff, and (5) permanent way department men, platelayers, etc., each section will elect representatives to the Sectional Council, and the number of representatives of each section will be according to the proportion of the employees in the groups of the grades in the section. In addition, the number of representatives elected to each group of grades will be distributed as nearly as possible by districts. Sectional Councils will deal with: (*a*) local application of national agreements relating to standard salaries, wages, hours of duty and conditions of service other than subjects submitted directly to the Central Wages Board by railway companies or the trade unions; (*b*) suggestions as to operating, working and kindred matters; (*c*) other matters in which the company and the

employees are mutually interested, such as co-operation with a view to securing increased business, greater efficiency and economy, the well-being of the staff, recruitment and tenure of service, etc.; (*d*) subjects remitted by the Railway Council to a Sectional Council.

For each railway a Railway Council is to be appointed consisting of not more than ten representatives of the company and ten representatives of the employees. The representatives of the employees will consist of two members of each Sectional Council; each side will have a secretary with power to take part in the proceedings. The Railway Council will deal with all matters with which a Sectional Council can deal, and which are of common interest to two or more sections, but it can deal with no matter before a Sectional Council has had an opportunity of considering it. If a Sectional Council is unable to agree on any matter, the employees' side may refer it to the trade unions concerned, or the Council may, by agreement, refer it to the Railway Council. If a Sectional or Railway Council cannot agree on any question of the local application of national agreements in regard to rates of pay and conditions of service, the matter of difference may be submitted by the employees' side to the trade unions concerned, who take it up with the company, and, failing agreement, may refer it to the Central Wages Board. Before employees can submit any question to a Sectional or Railway Council they must first submit it to the company to consider in the ordinary way, but, failing a satisfactory answer within twenty-one days, the facts may be reported to the employees' secretary of the Council concerned, and the company itself must proceed in the same way. The working of the Railway Councils and Committees will be followed with the greatest interest by all concerned in the development of industrial conciliation machinery.

It cannot be doubted that this conciliation machinery if loyally worked both by companies and unions, and there is no reason to fear that such will not be the case, ought to be productive of the greatest harmony and co-operation in the railway industry. Experience of its operation up to the present time affords good augury for its future success. But further experience will probably show that additional organization, not necessarily requiring statutory enactment, will be necessary. Mr. Wedgwood, in his article in *Reconstruction in Europe*, is of that opinion:

Two things are wanting to complete the new structure—first, a principle in accordance with which the broad general movements of wages may be regulated, and secondly, a procedure for linking the decisions of the Rates Tribunal with the findings of the National Wages Board.

It is evident that the two bodies will deal with two sides of the same problem; other things being equal, increased wages can only be met by increased rates, and a reduction of rates will entail a corresponding reduction of wages. If this were all, the problem would be relatively

simple ; it would be a mere question of addition or subtraction. But it is common knowledge that you may increase charges without increasing revenue ; the manufacturer and the traveller have the last word after all, and no tribunal can compel them to use the railway if the charges are more than they are willing to pay. The old principle of "what the traffic will bear" provides a very efficient maximum limit, which cannot be disregarded either by the railways or by the tribunal. And at the other end of the scale contrary forces come into play. Wages may be reduced to a point where the reductions no longer give reduced costs. To fix charges and wages in harmony with these two opposing forces will be the joint task of the two tribunals ; and it is not likely to be discharged to the best advantage of the public, the railways, and their employees unless some procedure is evolved which will enable the two tribunals to take full counsel with one another.

Happily, no Act of Parliament is necessary to make good these deficiencies ; one may reasonably hope that the logic of circumstances will in due course supply what is wanting.

Such, in broad outline, is the effect of the Railways Act, 1921. Except in regard to a transitory provision dealing with railway statistics, the Act does not apply to railway companies in Ireland. The working of this great experiment, for it is a radical amendment, in fact reversal of the principles of English railway legislation, will be scrutinized carefully by most members of the community, for all have a direct and personal interest in its successful operation.

INTERNATIONAL CONDUCT DURING THE WORLD WAR.

[*Contributed by* ARNOLD D. MCNAIR, Esq.]

Pre-war Prophecy.—In a passage which has now become classical, W. E. Hall [1] foretold the recent Armageddon :

"It would be idle also to pretend that Europe is not now (1889) in great likelihood moving towards a time at which the strength of international law will be too hardly tried. Probably in the next great war the questions which have accumulated during the last half century and more will all be given their answers at once. Some hates, moreover, will crave for satisfaction ; much envy and greed will be at work ; but, above all and at the bottom of all, there will be the hard sense of necessity. Whole nations will be in the field ; the commerce of the world may be on the sea to win or lose ; national existences will be at stake ; men will be tempted to do anything which will shorten hostilities and tend to a decisive issue. Conduct in the next great war will certainly be hard ; it is very doubtful if it will be scrupulous, whether on the part of belligerents or neutrals ; and most likely the next war will be great."

In 1903 the late Professor Westlake, in giving evidence before the Royal Commission on the Supply of Food in Time of War, was asked [2] :

"6963.—MR. CHAPLIN : Have you formed, and can you give to the Commission any opinion of your own as to how far you think it probable that International Law would be observed, generally speaking, in the event of war between this country and one or more of the Great Powers ? —I think it would be observed in what I may call ordinary wars, by which I mean to exclude great political convulsions, such as those which attended the French Revolution and Empire. What arises also in my mind is that any serious war with a civilized Power in which England might be engaged would probably be one of the great convulsions, and we should have not merely one, but more than one of the bigger States allied against us.

[1] *International Law* (3rd ed.), Preface. August 1889.
[2] Quoted, *The Times*, February 6, 1915.

"6964.—That points to the fact generally that in the event of such a war as you describe International Law would not be well observed? —I think we could not rely upon it in such a case as that."

Professor Garner's Work.[1]—A very important book recently published by Professor J. W. Garner, Professor of Political Science in the University of Illinois, contains almost exhaustive material for estimating the validity of these prophecies of Hall and Westlake.

The mass of data collected and arranged by Professor Garner will prove of the highest value to diplomatists, publicists and students whose business or pleasure it may be to take part in the restatement of International Law after the rude shocks which it has sustained during the world war. Professor Garner's task has been rather that of the recording angel, sitting above the battle and making every effort to find out exactly what was done by every belligerent and neutral, how far it accorded with international law as hitherto recognized, and, in so far as it failed to accord, what the defence is. His preface is dated April 1, 1920, and he tells us that the manuscript of the book went to the printer shortly before the death of Professor Oppenheim (at whose request the book was undertaken) in October 1919. A delay of a year or two would have placed at the author's disposal a larger amount of material, particularly I should think from ex-enemy sources, but it is important that we should have the book at once while the resettlement of the world is still in progress, and the delay was wisely avoided.

No one can read the book without a profound feeling of depression. In chapter after chapter the author narrates the generally accepted rule, the numerous instances of its violation during the recent conflict, the belligerent's dishonest protest or cynical admission, and finally his excuse. "Forbidden Weapons and Instrumentalities," "Treatment of Hostages and Prisoners," "Devastation of Enemy Territory," "Submarine Mines," and "Maritime War Zones," "Submarine Warfare," "Land and Naval Bombardments," "Destruction of Historic Monuments," "Aerial Warfare," "Violations of the Geneva Convention," and many other topics are dealt with. There is hardly an offence against the rules of war which could have been committed that was not committed. During war it is not always easy to estimate the truth of an allegation against an enemy. The interruption of intercourse makes it difficult for him to state his case; the passions aroused tend to obscure and bias

[1] *International Law and the World War.* (Longmans, Green & Co., 1920.) Two volumes.

the judgment; and scepticism is engendered by an uneasy feeling that "atrocities" make good propaganda—good for recruiting and good for fostering an "offensive spirit." These obstacles to clear vision are now removed, and we can read in Professor Garner's pages a plain and, I consider, just narrative of facts and distribution of blame. His labours, not merely in selecting from official records and utterances such as judgments, diplomatic notes, and speeches by prominent statesmen and soldiers, but in rescuing useful data from a mass of ephemeral literature such as newspapers and narratives of war experiences, have resulted in a work which already is without doubt the classical source of information upon the international lawyer's aspect of the recent war.

The German Invasion of Belgium.—This is a sordid story and I do not propose to tell it again. Civilization has already pronounced a moral judgment upon it. But apart from the forum of morals was there anything to be said for it as a matter of international law or practice? Everything that could be said has, we may depend upon it, been said by the German professorial corps which was mobilized to do battle by argument on this point. Professor Garner's analysis of their arguments and his dispassionate and temperate verdict will appeal to many as the most powerful part of his book. What possible lines of justification were advanced? (I do not refer to Chancellor von Bethmann-Hollweg's famous "scrap of paper" dictum, for that was an inadvertent lapse into candour on the part of a diplomatist who subsequently explained that he "may have been a bit excited and roused . . . at seeing the hopes and work of the whole period of chancellorship going for naught."[1] At least six lines of attempted justification within the limits of International Law have been put forward.

(*a*) **The Right of Self-preservation.**—It is one of the most vulnerable parts of the corpus of International Law that it should be possible to justify violations of the rights of another or of a recognized rule of law upon such a ground as this. And yet a string of respectable names can be cited in support of the existence of such a defence.[2] Such a defence goes to the very root of the existence of any body of international rules that may be recognized by the family of nations, and the possibility of resort to it carried within

[1] Quoted by Professor Garner, *op. cit.*, vol. ii, p. 192, from which it appears from an interview which the Chancellor gave to a pressman in January 1915 that what he really meant was that "among the reasons which had impelled England into war the Belgian neutrality treaty had for her only the value of a 'scrap of paper'"!

[2] See the writers quoted by Professor Garner, *op. cit.*, vol. ii, p. 193.

it a standing threat to the "rule of law" which it is the business of international lawyers and all other good citizens to foster. To apply for the moment the analogy of municipal law, the common law of England recognizes as a fact of human experience that when an aggressor strikes me or my wife or child, I shall not (as doubtless I ought to do, but for the imperfections of human nature) merely run and telephone for the police; I shall hit him back. "Nature prompts a man who is struck to resist; and he is justified in using such a degree of force as will prevent a repetition." [1] "Nor," adds Professor Kenny, "is it necessary that he should wait to be actually struck, before striking in self-defence. If one party raise up a threatening hand, then the other may strike." The common law recognizes self-defence, even anticipatory self-defence, as a fact of human experience and then proceeds to delimit its boundaries. To abolish it would be to legislate or to adjudicate in advance of human nature and public opinion, and to undermine the prestige of law by exposing it to a certainty of frequent violation.

But how do the international lawyers treat the problem? They too recognize as a fact of human experience that nations will in the dire necessity of self-preservation violate the rights of other nations. But so afraid are they of exacting by their writings a standard to which all States will not conform, that their pronouncements upon the right of self-preservation are deplorably lax. Let us take a few illustrations: Hall's chapter vii, "Self-preservation," opens with the following alarming statement:

> "In the last resort almost the whole of the duties of States are subordinated to the right of self-preservation. Where law affords inadequate protection to the individual he must be permitted, if his existence is in question, to protect himself by whatever means may be necessary, and it would be difficult to say that any act not inconsistent with the nature of a moral being is forbidden, so soon as it can be proved that by it, and it only, self-preservation can be secured. But the right in this form is rather a governing condition, subject to which all rights and duties exist, than a source of specific rules, and properly perhaps it cannot operate in the latter capacity at all. It works by suspending the obligation to act in obedience to other principles. If such suspension is necessary for existence the general right is enough; if it is not strictly necessary, the occasion is hardly one of self-preservation."

In other words, a State whose existence is threatened (as the result of the actions and conduct of itself or of others) "must be per-

[1] Per Baron Parke, 2 Lewin 48, cited Kenny, *Outlines of Criminal Law* (9th ed.), p. 154.

mitted—to protect" itself "by whatever means may be necessary" which are "not inconsistent with the nature of a moral being," when by such means alone its "self-preservation can be secured." The "nature of a moral being" is apt to vary amongst the family of nations, and apparently the threatened State is the judge.

Says Oppenheim[1]: "It is a fact that in certain cases violations committed in self-preservation are not prohibited by the law of nations." And he proceeds to add that such violations "are excused in cases of necessity only," and that of this necessity every State must itself in the nature of things be the judge.

And so Rivier:

"When a conflict arises between the right of self-preservation of a State and the duty of that State to respect the right of another, the right of self-preservation overrides the duty. *Primum vivere*. . . . In certain cases a Government is bound to violate the rights of another country for the safety of its own. That is the excuse of necessity, an application of the reason of State. It is a legitimate excuse."[2]

Lawrence[3] is equally unsatisfactory:

"Every State is bound to respect the independence of its neighbours as a fundamental principle of International Law; but a regard for its own safety is still more fundamental, and, if the two principles clash, it naturally and properly acts upon the latter."

He then seeks to obtain some support from private law: "The doctrine that self-preservation of what is more precious even than life overrides ordinary rules is in no way peculiar to the law of nations. In every civilized State homicide is a crime of the greatest magnitude" (it is not, but murder is), "yet a woman who slays a man in defence of her honour is accounted blameless" (of murder, yes, for her act amounts to justifiable homicide).

Now with the greatest respect for these great names and for the learned editors who are or may become responsible for their posthumous reputation, these doctrines are mischievous. If they regarded themselves merely as the recorders of the conduct of States and asserted that, as a matter of fact, States do ignore their

[1] *International Law* (1st and 2nd ed.), vol. i, s. 130. Cited by Professor Garner, *op. cit.*, vol. ii, p. 193. But Professor Garner's quotation appears to be in part literal and in part a summary.

[2] *Principles du Droit des Gens*, vol. i, p. 277. Cited by Professor Garner, *op. cit.*, vol. ii, p. 193. Rivier's views are strongly contested by Westlake, *International Law*, pt. i (2nd ed.), p. 309.

[3] *Principles of International Law* (3rd ed.), p. 117.

obligations towards their neighbours when their very existence is challenged, well and good, that is the comment of history. But, unless I mistake them, they are not content with being historians; they proceed to lay down these principles as part of what they call "law"; they use such expressions as "must be permitted"; and then, rather shocked at the length to which they have committed themselves, proceed to give a few instances in which intervention for the sake of self-preservation is as justifiable as is the use of anticipatory self-defence by the common law.[1] *Dolus latet in generalibus*, and it is, perhaps, not presumptuous to suggest that international publicists will do much to rehabilitate the somewhat tattered corpus of their science if they will make it easier to discern when on the one hand they are merely narrating the conduct or practice of nations and when on the other they are enunciating the rules which should govern the conduct of nations if they all conform to law. The fact that from time to time that law is broken affords no reason for making subsequent breaches progressively easier by using language so vague, so comprehensive, as to tempt the perpetrators of those breaches to justify their actions as being sanctioned by writers upon international law.[2]

Professor Garner's analysis of the German maxim "Kriegsraison geht vor Kriegsmanier" and of the numerous excuses by German apologists for the invasion of Belgium forms one of the most interesting and trenchant parts of his book. As he points out, "such a theory, when carried out to its logical conclusion, . . . would lead to the very negation of international law."

(*b*) **Other Lines of Attempted Justification.**—A second plea in justification of the invasion of Belgium rests upon alleged French violations of Belgian neutrality. Professor Garner examines these allegations, but does not find them proved.

This is of crucial importance, for there is no doubt that in the present state of international law and practice as recorded in written works on the subject, if a belligerent has "sure information that

[1] It is perhaps unnecessary to state that these heretical views must not be attributed to Professor Garner.

[2] Westlake adopts a much stricter view upon self-preservation, *International Law*, Pt. I (2nd ed.), pp. 309–17, and adds (p. 311), "the contrast between, on the one hand, the generalizations which express whatever, with regard to self-preservation, may be its actual condition from time to time, and, on the other hand, the rules to be enforced by Government on the same subject, furnish an instructive instance of the difference, too often overlooked, between the laws of nature, which are the generalized expression of what is, and jural laws which lay down what is to be done."

his enemy, in order to obtain a strategic advantage, is about to march an army across the territory of a neutral clearly too weak to resist, . . . it would be impossible to deny him the right of anticipating the blow on the neutral territory." [1]

Germany has not yet satisfied the world that she had this "sure information."

Again (*c*), it was contended that certain Anglo-Belgian conversations of 1906 and 1912 constituted a breach by Belgium of her neutrality under the neutralization treaty of 1839; but, as Professor Garner points out, these conversations were entirely based upon the happening of the contingency, which did in fact happen, namely, an invasion of Belgium by Germany, and so far from being contrary to the treaty of 1839 had "in view the protection of the very neutrality which the treaty of 1839 was designed to establish and perpetuate." [2] Still further pleas, mercilessly analysed by Professor Garner,[3] are (*d*) that the treaty of 1839 was superseded by the Anglo-French and Anglo-German Conventions of 1870; (*e*) that the German Empire did not succeed to the obligations of Prussia under the 1839 treaty; and (*f*) that that treaty had lapsed under the operation of the doctrine of *rebus sic stantibus*. The perverseness with which some of these technicalities and subtleties have been laboured by apologists who must have known better will always remain a striking instance of the blinding or demoralizing effect of a too narrow type of patriotism.

A Weakness of the Hague Conventions.—The reader of Professor Garner's book will find ample material for estimating the manner in which the Hague Conventions have stood the strain of the recent war. There is one flaw common to a number of them to which attention should be directed. Clearly it was too much to ask that one belligerent should be bound by a Convention which his opponent had not ratified. But in their desire to ensure reciprocity the contracting parties appear to have gone too far. A number of Conventions contain the stipulations that should *any single* belligerent not have ratified the Convention that fact absolves all the other belligerents. Consequently we get the absurdity that the British and the German Empires are not bound by a Convention because Montenegro has not ratified it. And this absurdity is heightened when the failure to ratify by a power like Serbia having no seaboard absolves two maritime belligerents such

[1] Westlake, *op. cit.*, Pt. I, p. 315. [2] *Op cit.*, vol. ii, p. 209.
[3] *Op cit.*, vol. ii, pp. 210–21.

as the British and the German Empires from a purely maritime Convention in which Serbia could have no possible interest. It is gratifying to remember that in the *Mowe* [1] Sir Samuel Evans refused to rest his judgment on this ground. The result of this rule was, as Professor Garner points out,[2] that "none of the acts of the Conference of 1907 were legally binding on any of the belligerents during the late war," because Bulgaria, Italy, Montenegro, Servia and Turkey had not ratified them. This is reciprocity run mad. Surely it would be enough to provide that non-ratification by one belligerent should only absolve his immediate opponent from observing that convention, and thus fighting with one hand tied behind his back.

Effect of the War upon Municipal Law.—Turning to other aspects of the subject, Professor Garner also gives us a very thorough examination of the municipal law of the principal belligerent countries, notably the United Kingdom, France, the United States and Germany, in their treatment of alien enemies and their property, of the accessibility of their Courts to enemies, of trade and intercourse with the enemy, and of the effects of war upon contracts. He not only deals with what he and we would call the common law, but proceeds to trace the course of the emergency legislation to which every belligerent found it necessary to resort.

It is impossible to review the whole ground comparatively, and three instances will suffice.

(*a*) **Accessibility of the Courts of Law to Resident Alien Enemies.**—As is well known, the English Courts permitted alien enemies, who were resident in this country and had complied with the regulations requiring registration, to institute and defend actions,[3] even if they were interned,[4] at any rate where that internment was in pursuance of general policy and not due to espionage or some other hostile act. Indeed, practically the only procedural disadvantage suffered by the alien enemy resident in England who behaved himself was that, if and when interned, he was deemed by a somewhat curious prolepsis to be a prisoner of war and a writ of *habeas corpus* was denied to him.[5] The English judges were fortunate in having a clear line indicated to them by decisions reaching back for many generations. They had merely to substitute the modern [6] registration

[1] [1915] P. at pp. 12–13; Garner, *op. cit.*, vol. i, p. 26.
[2] *Op cit.*, vol. i, p. 19.
[3] *Porter* v. *Freudenberg* [1915], 1 K.B. 857 (C.A.).
[4] *Schaffenius* v. *Goldberg* [1916], 1 K.B. 284 (C.A.).
[5] *Liebmann's Case* [1916], 1 K.B. 268.
[6] Not so very modern. See 43 Geo III, c. 185, s. 22.

under the Aliens Restriction Act, 1914, for such expressions as "commorant in the realm by the King's leave and protection," and the alien enemy was brought within the *ratio decidendi* of the ancient cases and held to be entitled to sue and to defend himself —an admirable illustration of the adaptability of the common law.

The French Courts were not so fortunate and a vigorous controversy appears to have arisen,[1] in which it would seem that the majority of the French jurists espoused the modern and more enlightened view which permits resident alien enemies to sue and to defend actions. There was no express legislation on the point, and the French Courts appear to have adopted no uniform practice; but, Professor Garner tells us,[2] "in a number of cases—in fact in the majority of those in which the question was raised—the French Courts upheld the right of enemy subjects" (*i.e.* resident in France) "to sue both as plaintiffs and defendants." He concludes[3]: "Some [Courts] followed one rule, some another. The Court of Cassation does not appear to have passed on the question. It was unfortunate that the matter was never definitely settled by an Act of Parliament in the interest of certainty and uniformity of practice. It was a question of public policy which should have been dealt with by legislation and not left to the discretion of the Courts, with their conflicting opinions."

The practice in the United States substantially coincided with the English, and the following passage from a judgment of the Supreme Court of New York will serve as an illustration: "The resident subjects of an enemy nation are entitled to invoke the process of our Courts so long as they are guilty of no act inconsistent with the temporary allegiance which they hold for this Government."[4]

The German rule appears to have been, at any rate in theory, more favourable to the alien enemy than any of the foregoing in this respect, that it accorded a *locus standi in judicio* in a great many cases not merely to alien enemies resident within the German Empire but also to those residing outside it.[5] "Non-residence in

[1] Garner, *op. cit.*, vol. i, pp. 136–44.
[2] *Op cit.*, vol. i, p. 142.
[3] *Op. cit.*, vol. i, p. 143.
[4] Quoted by Garner, *op. cit.*, vol. i, p. 136.
[5] Garner, *op. cit.*, vol. i, p. 145, quoting *Journ. of the Soc. of Comp. Leg.*, January 1915, p. 54, where it is also stated (p. 55) in a summary of some articles published in 1914 by Mr. C. H. Huberich, that "the emergency provisions taken as a whole are creditable to Germany and its jurisprudence. They exhibit no spirit of vindictiveness." I do not know whether this policy was followed throughout the war.

Germany only involves this difference, that the alien enemy may be required to give special security for costs." But there is some evidence that the exercise of the privilege of litigation by non-resident enemies was attended by serious difficulties.

(*b*) **The Status of Locally Incorporated Companies having mainly enemy Shareholders.**—Here we find more marked divergence among the various belligerents. In England the commonly accepted view at the outbreak of war was that a corporation took its character from the country in which and under whose laws it was incorporated, without regard to the national status of its individual members; the corporation is a distinct juristic person and derives its character from the country which conferred personality upon it. But in 1916 the House of Lords, reversing the decision of five out of six members of the Full Court of Appeal, laid it down in the famous case of *Daimler Co.* v. *Continental Tyre and Rubber Co.*,[1] that the country in which and under whose laws a corporate body was incorporated is merely a *prima facie* test of its status and will give place to the test of the national status and character of its agents or the persons who are *de facto* in control of its affairs; and that the national status and character of the shareholders, while not in themselves affecting the character of the company, are relevant to—

> "The question whether the company's agents or the persons in *de facto* control of its affairs are in fact adhering to, taking instructions from, or acting under the control of enemies."

So in the *Daimler Co.'s Case*, where the secretary held one share out of 25,000, and was the only shareholder and the only officer of the company who was not an enemy resident in enemy territory, the burden of proving that it was not an enemy as tested in the manner above indicated might well be thrown upon the company, and an investigation by the Court of first instance would be required.[2]

[1] [1916] 2 A.C. 307. See also *In re* Hilckes, *ex parte Muhesa Rubber Plantations*. [1917] 1 K.B. 48 (C.A.); *The Polzeath*, [1916] p. 241; *The St. Tudno*, [1916] p. 291; *The Hamborn*, [1919] A.C. 993; *Elders & Fyffes, Ltd.* v. *Hamburg Amerikanische Packetfahrt A.G.*, [1918] 34 T.L.R. 275 (C.A.); *In re Badische Co.*, [1921] 2 Ch. 331.

[2] It is worth noting that the nature of the personality of a registered company has since been considered by the Court of Appeal in *Commissioners of Inland Revenue* v. *Sansom*, [1921] 2 K.B. 492, and that the general tendency of their judgment is to reaffirm in the purely domestic sphere the principle of the distinct existence of a corporation and of its corporators as laid down in the famous "one man company" case, *Salomon* v. *Salomon & Co.*, [1897] A.C. 22, a principle which the Daimler Co.'s case shows us has very definite limits in determining questions of enemy status.

The New York Supreme Court, we learn from Professor Garner, declined to follow this decision, and held that—

"A New Jersey corporation, a large majority of the shares of which were owned by a German corporation and a German subject resident in Germany, was an entity separate and distinct from its stockholders, and was therefore entitled to maintain an action."

To the same effect is the opinion of the law officers of the United States Department of Commerce on the subject of a certain fleet of merchant vessels bought from enemy and other owners by a Danish subject with money coming from enemy sources and thereupon transferred to the newly organized American Transatlantic Company whose chief officer was a German-American citizen. The company applied for the admission of the vessels to American registry as being "American owned ships," and the law officers of the Department expressed the opinion that "since the owners were a firm incorporated under the laws of Delaware, it mattered not who owned the stock or where the company obtained the funds, and the vessels were therefore entitled to American register," [1] and they were so registered. Which, however, did not prevent British and French cruisers from capturing several of them or the British Prize Court and the French Council of Prizes from condemning them.

In France it appears that most jurists accepted the separate entity theory, which found favour with the Courts of the United States, and the English Court of Appeal, but under the stimulus of a circular from the French Minister of Justice issued in July 1916, instructing the Courts that "those (companies) which were apparently French, but which on account of their direction or whose capital was wholly or in major part owned by enemy subjects, must be assimilated to the status of enemy companies," the French judges held a number of such *personnes morales* to be really enemy in character though incorporated in France.[2]

(*c*) **The Treatment of Pre-war Contracts crossing the Line of War.**—It is difficult to agree with Professor Garner's statement of the Anglo-American doctrine upon this subject, at any rate so far as the law of England is concerned. It is true that there are at least three possible rules to follow: (1) dissolution, (2) suspension, (3) no effect at all. (If the enemy party to the contract is resident on this side of the line of war, then the fact of his becoming an enemy

[1] Garner, *op. cit.*, vol. i, pp. 198–9. [2] Garner, *op. cit.*, vol. i, pp. 223–5.

on the outbreak of the war does not affect the contract, even if he is interned.) But we are concerned with contracts, one party to which is voluntarily resident or carrying on business in enemy territory, whether an enemy by nationality or not. Professor Garner leaves us with the impression, unless we misinterpret him, that as regards these pre-war contracts—those which cross the line of war—in his view "the general rule is that war does not *ipso facto* terminate such contracts, but merely suspends the rights of the parties—that is to say, they cannot sue on them until the return of peace." It is true that this view was current upon the outbreak of the recent war, very largely as the result of certain *obiter dicta* in *Janson's Case*,[1] but the experience of the war has been, at any rate in England, that although suspension may be theoretically a possible alternative, the Courts have not succeeded in finding many contracts the operation of which they are prepared to suspend. Probably the shareholder's contract of membership of his company is one instance of suspension [2]; and a policy of life insurance is another.[3] But the general rule, if there is one, is in favour of dissolution, abrogation, discharge, as the result of the outbreak of war, with this addendum that in the case of contracts which are "the concomitants of the rights of property" (*e.g.* partnership), while the contract itself (*e.g.* the relation of partners) is abrogated, the property (*e.g.* the enemy partner's share in the assets) is preserved; for, as Viscount Finlay, L.C., said in January 1918, "it is not the law of this country that the property of enemy subjects is confiscated" [4]; or, to be more up-to-date, it was not the law until the Treaty of Versailles and the ensuing Treaty of Peace Act, 1919, made it so.

[1] [1902] A.C. at p. 493; explained by Lord Dunedin in *Ertel Bieber & Co.* v. *Rio Tinto Co.*, [1918] A.C. at p. 269.

[2] *Robson* v. *Premier Oil and Pipe Line Co.*, [1915] 2 Ch. 124 (C.A.); *Daimler Co.'s* case [1916], 2 A.C. at pp. 330 and 352.

[3] *Seligman* v. *Eagle Insurance Co.*, [1917] 1 Ch. 519. In this case the plaintiff, a surety, did not become, as Professor Garner states (*op. cit.*, vol. i, p. 245), an alien enemy; it was the "life" insured who became an alien enemy, and he was not a party to the action, nor can we understand Professor Garner's statement that in *Elders & Fyffes, Ltd.* v. *Hamburg Amerikanische Packetfahrt A.G.*, [1918] 34 T.L.R. 275, "a contract between an English firm (a company carrying on business in England though controlled from America) and a German company registered in England was only suspended for the period of the war." The German company was incorporated in Germany, not in England, and the contract was declared by the Court of Appeal to have been dissolved by the outbreak of war and not merely suspended.

[4] *Hugh Stevenson & Sons* v. *A.-G. für Cartonnagen Industrie*, [1918] A.C. at p. 244.

The French attitude appears to have been determined not upon general principles, but by the issue of official decrees, the net effect of which Professor Garner tells us was that those pre-war contracts, the execution of which would benefit the enemy, were suspended, but those, the execution of which would not have that effect, "remained unaffected, and their stipulations might lawfully be performed." [1] So partnerships were "merely suspended" (and not as in England abrogated) "for the period of the war and not abrogated if the house was situated in France and the partnership was organized in pursuance of French law. Enemy partners . . . were incapacitated from exercising their rights." [2]

The German attitude was, at any rate at first, even more lenient than the French. The German law in force upon the outbreak of war did not prevent the making or performance of contracts with enemies across the line of war, and "none of the early German ordinances relating to trade with the enemy, the right of access of enemy aliens to the Courts, or the sequestration of enemy property contained any prohibitions in respect to the making or performance of contracts." [3] But an ordinance of December 1916 empowered the Chancellor, by way of reprisal, to declare upon the petition of a German party the annulment of most commercial contracts entered into with enemy subjects. As Professor Garner elsewhere points out, the benefit likely to accrue to Germany from intercourse with her enemies outweighed the possible injury—a fact which may explain the lenience or laxity of the German law towards trade and contracts with enemies. [4]

Some other Recent Publications.—M. J. de Louter's work, *Droit International Public Positif*,[5] has recently been translated by him into French at the request of the Carnegie Endowment for International Peace (of which the Division of International Law is under the direction of Mr. James Brown Scott). It presents from the point of view of a *partisan convaincu de l'école positiviste* an account of international law as it stood in 1914, though since then, *bouleversé et à peu près détruit*, as he remarks in his preface. The Carnegie Endowment has laid those interested in international law under yet another debt by thus rendering accessible to a wider circle

[1] *Op. cit.*, vol. i, pp. 254–5.
[2] *Op. cit.*, vol. i, p. 257.
[3] *Op. cit.*, vol. i, p. 260.
[4] *Op. cit.*, vol. i, p. 240.
[5] In two volumes, published by the Oxford University Press. There is a table of contents, but surely an index would have greatly increased the value of the work.

the work, written in Dutch in 1910, of a fellow-countryman of Grotius and Bynkershoek. Two other volumes [1] recently published by the Carnegie Endowment are valuable in estimating the position of international law as it stood before the recent *bouleversement*, *Proceedings of the Hague Conference of* 1899, and the first of three volumes of the *Proceedings of the Hague Conference of* 1907. It is useless to build anew without understanding what has gone before, and if it is true, as M. de Louter hopes, that *après une maladie aiguë et une défaillance fatale* international law *est prêt à se relever pour recommencer une carrière honorable et utile* it is only by a close study of the mistakes and illusions of the past that this can be done.

The Future.—But will it be done? Has international law *une carrière honorable et utile* in front of it? Not if it merely follows the pre-war line of development. Not unless there is a real change of method on the part of international publicists, and a real change of heart on the part of peoples and their servants, the statesmen and diplomatists, the sailors and soldiers. How many cases are there on record of a consensus of opinion of prominent international publicists throughout the civilized world upon the rights and wrongs of some important international incident? Take the British operations against Denmark in 1807. Were they or were they not justifiable? What degree of international unanimity exists on this question? British writers say Yes, on the ground of self-preservation; many Continental writers say No, and M. de Louter regards the British operations as *violence abominable*. International lawyers must become more international. Patriotism is not enough; witness the German *apologia* for the invasion of Belgium. Again, when public servants attend an international conference, such as the Hague Conferences, it is hopeless to expect any real progress if the delegates are instructed, as has happened too often in the past, to adopt a purely national attitude, only to concede what their own countries can afford to treat as immaterial, and not to consent to anything which may in any way be detrimental to their material interests, however beneficial to the world at large. And, above all, while we may yet be far removed from a true international sanction we have in the League of Nations, if we want it, the opportunity of creating a watchful, active, living, international conscience, which can promptly investigate allegations of breaches of international law, whether in peace or

[1] In English, also published by the Oxford University Press.

in war, and promptly condemn when those allegations are found to be true.

Hall, in the preface quoted at the beginning of these remarks, said that "if the next war be unscrupulously waged it also will be followed by a reaction towards increased stringency of law." If the unscrupulous methods of the recent war have, as Anatole France said, "made war a monster too ugly to live," Hall's prophecy may be more than fulfilled.

THE CRIMINAL LAW AND THE CRIMINAL INSANE.

[*Contributed by* Dr. Letitia Fairfield.]

The year 1922 will be memorable in the annals of criminology for a murder trial of exceptional interest both on account of the medico-legal problems involved and for the permanent mark it will leave on the criminal law. The sordid and brutal murder perpetrated by Ronald True has not only led to a fierce and prolonged controversy among high authorities in law and medicine over that individual's fate, but it produced the most important pronouncement on the law as regards crime and insanity made by the Court of Criminal Appeal since that body came into existence, and further, led to the appointment of a Committee by the Lord Chancellor to reconsider the whole question of the Criminal Responsibility of the Insane. That such reconsideration is urgently needed was apparent from the confusions and misconceptions which revealed themselves at every stage of the True case.

It is a remarkable fact, however, that in the trial which has revived the old controversy over legal tests of responsibility, the validity of the said tests from the medical standpoint, which is usually the point on which criticism is focussed, was not in issue at all. Inadequate and fallacious as the Macnaghten tests may be, it is clear that as put to the jury by Mr. Justice McCardie, they were broad enough to cover the case of Ronald True. Four questions were left to the jury:

1. Did the prisoner destroy the life of Gertrude Yates?

2. Did he at the time suffer from mental disease?

3. Did he at the time suffer from such defect of reason, from disease of the mind, that he did not know the physical nature and quality of the act?

If he did not, he would be guilty but insane.

4. Did he know that what he was doing was morally wrong according to the standard of his fellow citizens? If he did not, there again the prisoner would be guilty but insane.

The learned judge added:

"Even if the prisoner knew the physical nature of the act and that it was morally wrong and punishable by law, yet if he was by mental disease deprived of the power to control his actions, then, in his view, the verdict should be, Guilty, but insane."

It will be recalled that the four medical witnesses were unanimously agreed that True was certifiably insane, that he had delusions and other symptoms of mental disease, and that by reason of such disease he did not know that his act was right or wrong, though he did know it was punishable by law. The medical evidence would have fully entitled the jury to answer question 2 in the affirmative and question 4 in the negative, and return a special verdict, *if it had been accepted.* The difficulty lay simply in the fact that the jury did not believe the doctors and did believe that True's crime arose from wickedness and not insanity. Whatever the law regarding insanity as a defence had been, and however it had been presented by the judge, it is difficult to imagine that the verdict would have been other than it was.

This rejection of medical evidence on what is essentially a medical question is such a remarkable and unusual event in modern English Courts, that it is worth while to investigate it further before proceeding to discuss the broader issues indirectly raised by this trial. The impression has gained ground that doctors and lawyers are constantly in conflict over the defence of insanity, and that medical men are habitually advancing wild theories in the Courts which if accepted would undermine the whole administration of justice and prevent the punishment of anyone at all. This is wholly contrary to fact.[1] In criminal trials for many years past, the concordance of opinion between judge, jury and medical witnesses has usually been very close, and the verdict is rarely disputed by the public. A prison doctor told the writer recently that he had given evidence in nearly a thousand cases, and in only two of these had his opinion as to the prisoner's mental condition been rejected by the jury. Where the defence of insanity fails it is usually supported by a single expert witness, and it is noteworthy that in every case until the one under discussion, the Court of Criminal Appeal had taken the view of the prison doctor, whether for or against the prisoner. Yet although the eleven doctors, all experts in psycho-

[1] *R.* v. *Chetwynd*, 1919, in which an impudent and ingenuous plea of "epileptic double personality" was raised by a motor-car thief, is one of the few exceptions.

logical medicine, who saw True after his arrest all considered him insane or a moral imbecile or both, and no doctor could be found to give rebutting evidence, the Court and the public were not convinced.

A unique combination of circumstances rare in themselves accounted for this unfortunate result. In the first place, True was unlucky enough to suffer from two pathological mental conditions which are entirely outside the experience of the vast majority of laymen and of most doctors. As testified by Dr. Norwood East and his colleagues, True's conduct and history indicated "mental disorder from birth" to which had been superadded morphia insanity. To the uninitiated his delusions, unprovoked violence, phantasies, braggadocio, were just a series of unrelated eccentricities; to the experienced they presented a characteristic picture of mental derangement aggravated by morphia. It was equally clear that the "mental disorder from birth" was chiefly a moral deficiency, of the kind to which the law has given statutory recognition in the "moral imbecility" clause of the Mental Deficiency Act 1913.

The diagnosis of these rarer types of mental disease is an extremely difficult matter for the most experienced and skilled medical psychologists, and it is hardly surprising that the jury failed to realize the significance of True's record. They did not realize that superficial "smartness" may be exhibited by a mind utterly lacking in the qualities necessary for forming sane judgments, on which the normal concepts of conduct are based. As Dr. Mercier pointed out[1]: "The cardinal feature of moral imbecility is the combination of persistent vicious or criminal conduct with initial mental defect," but the defect in mind frequently shows itself as a weakness of the higher mental faculties only. The defective may be described as a "clever fool," often capable of acquiring a certain amount of learning, but lacking in power to adapt his knowledge to circumstances or to foresee the consequences of his actions. It was highly characteristic that the only people who thought True sane were those who hardly knew him. Casual acquaintances might lend him money, but his intimates in the Air Force, in West Africa, and in social life had a uniform tale of crazy deeds and considered him "utterly irresponsible." His family, who presumably knew him best of all, becoming aware that he was going about looking for an imaginary persecutor with a loaded revolver were taking active steps to have him certified as insane before the tragedy happened.

[1] *The Practitioner*, October 1917.

The second influence adverse to the prisoner was the curious inverted snobbery aroused by the rumour that True's relatives were titled people. A deplorable outburst of public spite was accentuated by the execution of Jacoby, an eighteen-year-old lad in humble circumstances, whose case for mercy, whatever its merits, was wholly different from that of True, as the question of mental condition was not in issue. But the cry of "one law for the rich and another for the poor" is too valuable a piece of propaganda to be wasted even where it is wholly inapplicable.[1]

The final and probably overwhelming obstacle to the acceptance of True's plea of insanity was, however, the fact that he robbed as well as killed. A careful study of public opinion, as reflected in the press and in conversation, will show that to the popular mind the presence or absence of an intelligible motive is the practical test of sanity. No question as to degrees of responsibility is ever raised, for example, in the case of a loving wife and mother who murders her children. And it was noteworthy that at the trial of Walker, the young footman who murdered a district messenger boy, the verdict of "Guilty, but insane" was given unhesitatingly by the jury and endorsed by the public without a word of protest, although the medical evidence of insanity was of the weakest kind.[2] There was much to show that the prisoner knew what he was doing throughout and that he knew that he was doing wrong. But Walker's motive was the gratification of abnormal desires, unintelligible to the average man and therefore accepted as *prima facie* evidence of insanity. If his victim had been a girl whom he wanted to assault and not a boy whom he wanted to torture, the public verdict on his deed would have been very different. There is much good sense in the popular judgment, but it is inadequate to meet fairly all varieties of mental disorder. In order to judge whether normal motive is necessarily a proof of sanity "we have to compare the amount of pleasure enjoyed with the magnitude, the certainty and

[1] Two curious parallels to the True-Jacoby incident have occurred in recent times. In July 1899 there was great dissatisfaction over the acquittal of Miss Petersen, who shot a man under the influence of religious and erotic delusions, her fate being contrasted with that of Mary Ansell, a month earlier. Ansell was a working girl of 18 who had poisoned her sister for insurance money with much cunning and deliberation. The cases of Townley and Wright furnish another example.

[2] With all respect to the eminent alienist who gave evidence on behalf of Walker, the suggestion of epilepsy put forward was wholly at variance with the evidence. The prisoner on many occasions after his arrest gave a continuous and accurate narrative of the crime to the officials. Medical authorities are unanimous that in "epileptic automatism" no memory of the acts done during automatism is carried through to the normal state.—See *The Times*, June 23, 1922.

the proximity of the evil that is incurred." [1] A gigantic danger risked for the sake of a small gain which might have been attained by other means, may be as strong evidence of insanity as no motive at all. It is suggested that the murder of Gertrude Yates was a case in point. Furthermore, the efforts at subsequent concealment of which much was made at the trial would have been unworthy of a child of seven engaged in stealing jam and only serve to demonstrate the gulf between the minds of True and the normal adult mind.

If the difficulties which emerged in True's case were adventitious and in no way created by the present state of the criminal law, the restatement of the law by the Court of Criminal Appeal [2] opened a rich possibility of trouble for the future. Summed up briefly the situation is now this: the Macnaghten rules having been re-established in all their rigidity, only those persons who did not know the nature and quality of their act, or did not know that it was morally wrong, are to be allowed the benefit of the verdict "Guilty, but insane," however insane they may be in other respects. It was intended by the learned judges who framed the answers to the historic questions in 1843 that the tests imposed should in fact distinguish, as among alleged lunatics, between those who were "responsible" for their acts and those who were not. It has been repeatedly shown in the intervening eighty years that these tests do nothing of the sort. If literally interpreted they lead to results revolting to any civilized conception of justice.

Consider the first question which the jury is asked to decide: Did the prisoner know the nature and quality of the act? A negative answer would of course be conclusive as regards his responsibility. But such an answer can very rarely be given. And a positive answer leads nowhere. It happens that in disease of the mind, the ability to know what is actually being done by the body at any particular moment is not often affected and may be retained when other vital functions of the mind are for one reason or another in abeyance. A disordered mind retains power of perceiving messages conveyed to it from the senses, including the tactile and muscular sense, so that an individual knows what physical act he is performing, even when power of controlling such acts, or of foreseeing their consequences, or comprehending their moral significance, is gone. A doctor can very rarely testify in the witness-

[1] Dr. Mercier, *Allbutt and Rolleston's System of Medicine*, vol. viii, p. 280.
[2] C.C.A. Reports, June 1922, p. 166.

box that the prisoner did not "know what he was doing," but he might often truthfully add that it was the only thing he *did* know at the moment. It has been pointed out by distinguished alienists that only for patients in acute delirium and in certain epileptic states could this question be answered in the negative.

The second question, which is concerned with the prisoner's knowledge of whether the deed was right or wrong according to the law of the land, or "according to the standards of his fellow citizens," has a specious appearance of being exhaustive and conclusive, but it fails to conform with the known disorders to which the human mind is subject. A lunatic may, for example, have delusions which concern the very nature of right and wrong or the administration of the law. He may believe that he is the direct and sole recipient of a higher law which compels him to act counter to ordinary morality: *e.g.* Miss B. Petersen,[1] who shot a man under the direct instructions of the Almighty, having invited a clergyman to witness the deed. He may think, as did a lady known to the writer, that all policemen are Jesuits in disguise and all judges secret Papal emisssaries, and that it is the duty of all good Protestants to outwit them. Again, many a lunatic, confused, deluded or incapable of coherent thought, recognizes dimly that a policeman or asylum attendant "at his elbow" would restrain the acts he desires to do, and is yet quite incapable of appreciating any moral obligation to restrain himself from doing such acts if no one is there to stop him.

There are also the common examples of profound emotional disturbance such as are found in manic-depressive insanity. Memory and the power of consecutive thought and speech may be more or less preserved, but the patient's normal standards of conduct and dealing with his fellow-men are swept away in the gigantic rush of abnormal feeling. Moral standards, if remembered, mean nothing. An eminent professional man in a maniacal state will smash a collection of valuable china in order to enjoy the noise and the consternation of the owner. A good housewife under the hideous shadow of melancholia will sit weeping all day while her home goes to ruin. She may indeed murder all her children, sometimes thinking that they are to be tortured, sometimes without any specific delusions, but merely to help them out of an intolerable world. That her deed is contrary to law she knows, for she speaks of hanging for it. For these tragic figures the criminal law provides no loophole—in theory. A former superintendent of Broadmoor

[1] *The Times*, July 13, 1899.

stated that a strict application of the rules would have hanged more than half the women in his asylum for the murder of their children.

It would be possible to extend indefinitely this review of persons whom no reasonable man would hold responsible for their acts, and are yet technically considered responsible by the Criminal Courts. The inconsistency appears to be due to certain fundamental psychological errors held by the learned judges who framed the Macnaghten rules. Without raising contentious points about determinism and the freedom of the will, one may well object in the first place to *awareness of certain facts* being made the one test of responsibility. Did the prisoner *know* the nature and quality of the act? Did he *know* that the law or his fellow citizens considered it wrong? Now, this is not the meaning of responsibility in common speech. One does not consider a man responsible for his acts unless he can *reason* normally about material facts as well as *perceive* them. Indeed, this is clearly recognized by the criminal law in the case of children under seven whose knowledge of fact is not deemed relevant as their reason and judgment are assumed not to be developed, and by the civil law in the case of lunatics for whom certification under the Lunacy Act does not depend in the least on what they know or do not know, but on the unreasonableness of their conduct. But the Macnaghten rules exclude all disease of the mind, however profound, which does not interfere with the perception of certain specific facts, though it may have completely overthrown the balance of reason.

Secondly, the judges would appear to have misunderstood the nature of partial insanity and the significance of delusions. Misled by loosely expressed medical theories as to "monomaniacs" which were rife at the time of the Macnaghten trial, they evidently concluded that the insane person could fairly be treated as sane except on the exact points on which he expressed delusions. The answer to the fourth question even embodies the crowning absurdity of advising that a criminal who commits an offence under the influence of a delusion "must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real." That is to say, the unhappy lunatic is expected to be able to reason sanely on the very point on which he is *ex hypothesi* insane. The delusions themselves the judges seem to have conceived as burrs stuck on the surface of the brain, too tightly adherent to be shaken off, but in no way affecting or affected by the brain itself. They missed the essential fact that a delusion is of

importance not so much as a gross misapprehension of fact, but as an indication that the patient's reasoning has broken down, and he can no longer *think* on certain matters like a normal man. And where the reason has failed on one point, it is quite impossible to tell when or where or how it will fail again, or how the judgment and conduct will be affected. It is common knowledge that delusions are frequently concealed and are rarely single, that if the conduct of a deluded individual is examined carefully aberrations from the normal will certainly be found. Much nonsense has been talked about lunatics who are "sane on every other point except one." This means little more than that they talk sanely on other topics and are capable of carrying on normally certain activities of life, mostly of a routine nature. But no alienist of experience would appoint as trustee or leave as guardian of his children a solicitor who gravely informed him that he had a crocodile in his inside, even though that gentleman exhibited no other aberrations whatever. The modern intensive study of the insane has shown the wisdom of a warning uttered by Dr. Mercier long ago that "we can never be sure how far the penumbra of a man's insanity extends." Even where a "partially insane" person shows deliberate malice and cunning in the commission of a crime, it is impossible to be sure that these qualities are not symptoms of his disease, springing from the same hidden source as an apparently unrelated delusion.

Based on such grave misconceptions as they were, it is inevitable that the rigid application of the Macnaghten rules should produce results in the criminal law out of harmony with the civil law standards of insanity, and indeed with its own fundamental principle which requires a "mens rea" as an essential ingredient of a crime.

A dispassionate consideration of the records of the Criminal Courts for the past half-century would show that a harsh and narrow rule would be still more out of harmony with public conceptions of justice. It is demonstrably neither the purpose nor the practice of the English people to hang lunatics, and in fact it is many years since a person whose sanity the records leave seriously in doubt has been executed.[1] It is true that there has been no con-

[1] C.Ap.R., 1909, p. 89, *R.* v. *Perry*, *R.* v. *Jones*, C.Ap.R., 1910, p. 207, are the two most debatable examples in recent years of the failure of a defence of insanity. Perry had undoubtedly suffered from epilepsy with mental symptoms earlier in his life, but his own story negatived the suggestion of "automatism." He was sane when arrested, and he supplied the prison officials with a complete account of the crime and a reasoned explanation of his acts, explaining that he killed his first victim to rob her and his three subsequent victims to facilitate attempts at escape. Victor Jones presented a more difficult problem, as the facts were very scanty. But

tinuous development of legal or public opinion on the matter. In all ages there have been sentimentalists whose detestation of horrible crime has rendered them incapable of calm contemplation of the criminal,[1] and logicians like Smollett and Archbishop Whately, who held that persons with less than human reason have no claim to treatment as human beings. But since the days of Coke, who wrote that "It is a sorry spectacle to see a madman hang," a succession of the highest legal authorities have supported his view (Blackstone, Mansfield, Henry Erskine, Lindley and others). Since 1843 it is notorious that judges have adopted one device after another in an endeavour to reconcile the Macnaghten tests with common sense and humanity in the actual case before them for trial. Mr. Justice Stephen habitually took the bold course of assuming that the judges who framed the tests meant what his acute brain divined they ought to have meant. "You will probably see," he said to the jury at the trial of David Davies (an epileptic murderer) in 1888, "that *knowing* that the act is wrong means nothing more nor less than the power of thinking about it as a sane man would think about it, the power of attaining to a full conception of the horrible guilt there would be in a murder. . . . That is the law as I understand it, which by guilt implies the power of discriminating between right and wrong; that is the test of responsibility."[2] It must be doubted, however, if all that the learned judge suggested can legitimately be read into the phrase "knowledge of right and wrong," and it was certainly not so intended by its authors. Other judges have gone even further. In the trial of a man Brocklehurst in 1884, the Counsel for the prosecution suggested that the question for the jury was whether the prisoner was capable of "appreciating the difference between right and wrong," Mr. Justice Cave replied, "No, the question is whether he was insane at the time." In recent years, Mr. Justice Bray in *R.* v. *Fryer* and *R.* v. *Hay*, Darling J. in *R.* v. *Jolly*, McCardie J. in *R.* v. *True* have supplemented the two stereotyped questions by asking the jury whether the prisoner had "by mental disease been deprived of the power to control his actions," a vague

the evidence of previous mental abnormality was very slender, he was sane in prison and there was a strong motive of normal sex jealousy.

[1] See trials of Arnold, Earl Ferrers, T. Bowler, Bellingham, Jefferson (all of whom were certifiably insane), and the correspondence in *The Times*, May and June 1922, on the True case.

[2] See also his charge to the jury in case of Willam Burt, Norwich, November 1885, and *History of Criminal Law*, vol. ii, p. 165.

phrase which might if literally interpreted include all forms of certifiable insanity.

Even where the tests as embodied in the Macnaghten rules have not been literally varied, it has become increasingly the practice for judges to direct the juries' attention to the prisoners' *insanity*, where that has been established by medical evidence, rather than to the formal tests. Indeed, whatever views are held in theory about "partial insanity" and the possible responsibility of insane persons for their acts, they are apt to crumble before a concrete case. It is recorded that the last woman executed for witchcraft in these islands was a demented old hag in the North of Scotland, who warmed her hands gleefully at the fire lit to consume her, and "chuckled to see the bonny blaze." Modern nerves are weaker. It is submitted that no jury would now deliberately send a man with definite symptoms of insanity to the gallows, and no Home Secretary would allow an insane man to go to execution. The English Law has come very close in practice to the simple terms of the French Code: "There can be no crime or offence if the accused was in a state of madness at the time." What the Court really wants to know is whether the prisoner did the act with which he is charged under the influence of insanity or not. It is difficult to see why the question should not be put to the jury directly in this direct form as a plain question of fact, all technical and irrelevant psychological tests being eliminated. By using the term "insanity" the great army of neurotics, hysterics, psychosthenics, neurasthenics, and others of the mentally abnormal who are yet capable of self-control would be excluded, as it is certainly desirable that they should be. But medical practitioners who have now to estimate, according to their skill, a patient's responsibility for his actions for the purpose of certification under the Lunacy Acts, would find their task of advising a Criminal Court immensely simplified if the same standard could be accepted by the criminal as by the civil law. Removal of the existing patent incongruities would enhance the dignity of English jurisprudence and in no way weaken the deterrent effect of the law on such criminals who are capable of being deterred. The verdict "Guilty, but insane" carries terrible and permanent consequences, but such mercy as it brings should be available for every criminal for whom its words imply that it is intended.

THE CANADIAN CONSTITUTION AND COMPANY LEGISLATION.

[*Contributed by* PROFESSOR BERRIEDALE KEITH, D.C.L.]

The Complexity of the Issue.—Discussion is still as active as ever in Canada on the problem of company legislation as affected by the constitutional powers of the Dominions and the Provinces.[1] The framers of the British North America Act could not foresee the development of the creation of companies nor the manifold ramifications of their business, and thus they left wholly ambiguous the powers of the federation and the local governments in this regard. The Judicial Committee has by a series of recent decisions elucidated many of these points, but not, in the opinion of Canadian lawyers, without creating other and not less serious difficulties, which nothing except an amendment of the British North America Act can remove. But to such a consummation there is opposed the grave difficulty of securing agreement between the Dominion and the Provinces which is a constitutional necessity for any alteration of the federal pact. The Dominion and the Provincial Governments unfortunately are inclined to insist on their own rights rather than to unite in the evolution of a system more adapted to modern conditions, and apart from such feelings there are perfectly real difficulties in the way of any effective solution.

Dominion Powers of Incorporation.—The Dominion's authority to incorporate companies under s. 91 of the British North America Act is of two distinct kinds. In the first place it can incorporate companies to deal with matters which fall within its exclusive specific powers, such as companies for navigation and shipping, sea coast and inland fisheries, or such works as are by s. 92 (10) excluded from the sphere of the authority of the Provinces. The paramount character of this legislation is shown by the decision in *La Compagnie hydraulique* v. *Continental Heat and Light Company*,[2] in which it was

[1] See last H. G. Garrett, *Can. Law Times*, vol. xlii, pp. 466 ff., 531 ff., 583 ff.

[2] [1909] A.C. 194.

decided that a Dominion Act incorporating a company with general powers as to heat and light prevailed over a Provincial Act, in itself perfectly valid, which purported to confer on a provincial company exclusive rights in a certain part of the Province. This exercise of Dominion power has been called in question by the Provinces, but it is plainly in accordance with the intention of the constitution. The second power of the Dominion is much more susceptible to objection. As the residual power in the Dominion rests with the federal Parliament, it possesses the general right of incorporating companies other than companies with provincial objects, the sole power to incorporate which is expressly given to the Provinces by s. 92 (11). The Dominion has interpreted this state of affairs as signifying that every company which desires to carry on business in more than one Province must receive incorporation from the Dominion, an interpretation now rejected by the Judicial Committee, but one at least excusable. But it has also adopted the much more indefensible position of incorporating companies which really mean to carry on business in one Province only, and which apply for Dominion incorporation merely because they wish to avoid incorporation in the Province in the hope thus of escaping the burden of provincial restorations.[1]

Provincial Powers over Dominion Companies.—The Provinces have naturally enough retaliated by constant attempts to bring Dominion companies under their legislative control. In the case of companies formed under exclusive specific Dominion powers, *e.g.* as to banking or interprovincial or international railways, the powers of the Provinces are definitely limited; they may not even in the exercise of their legitimate powers legislate so as in effect to deal with the heads allotted to the Dominion; how delicate the distinction may be between what is and what is not possible is shown by the fact that the Canadian Pacific Railway Company has been held liable to clean a ditch under a provincial Act, but not to fence its line.[2] The real difficulty arises in regard to companies incorporated under the general residual authority of the Dominion. On one view, indeed, there would be hardly any such class of companies, since all commercial companies ought to be held to be formed under s. 91 (2), regulation of trade and commerce, and therefore to fall into the class of companies incorporated under specific powers. But this interpretation of the general terms of s. 91 (2) is inadmissible, for the

[1] See *In re Companies*, 48 Can. S.C.R. 331, at p. 425, *per* Duff J.
[2] See Keith, *Imperial Unity*, p. 453.

Judicial Committee holds that the exclusive right of the Provinces under s. 92 (13) over civil rights in general is not to be whittled away by giving this wide sense to s. 91 (2).[1] Hence it follows that the provisions of the Companies Act of Canada which permit a Dominion company to hold real property cannot override a general provincial law restricting or prohibiting the holding of such property by corporations generally.[2] The same principle applies to any general provincial legislation; thus a Dominion company may be required to register and give information, and to pay fees not exceeding those payable by provincial companies[3]; it can be subjected to a system of licensing in order to secure the observation of some restriction as to contracts to be observed by the public generally in the Province, or the doing by the public of some act of a purely local character only under licence.[4] Further, if a Province prohibits the carrying on of some trade, a Dominion company cannot evade that prohibition because of its Dominion status. On the other hand there are definite limits to provincial power. No Province can destroy a corporation which it did not create, and provincial acts claiming this power are clearly *pro tanto* of no effect. Nor, more generally, will a provincial Act be upheld which seeks to destroy the status and capacity of a Dominion company as opposed to regulating corporations in general. A Province may tax a Dominion company under its power of direct taxation, provided that it does not attempt in effect to levy indirect taxation under the guise of direct taxation, and provided that it does not discriminate between provincial and Dominion companies; but it may not enforce this taxation by any action which negates the Dominion company's status, *e.g.* by forbidding it to sue in the provincial Courts, nor can it impose such a penalty for failure to register, since in either case this would be to deny the company the juristic personality conferred by Dominion incorporation. While this doctrine has the authority of the Judicial Committee,[5] there is neither authority nor adequate ground for the further claim made on behalf of Dominion companies that in effect it is a negation of their status to exact from them fees based on the nominal capital when similar fees have already been paid to the Dominion, a contention which, if upheld, would inflict an obvious injustice on the Provinces.

[1] *John Deere Plow Co.* v. *Wharton*, [1915] A.C. 330, at p. 340.
[2] *Great West Saddlery Co.* v. *The King*, [1921] 2 A.C. 100, at p. 120.
[3] *John Deere Plow Co.* v. *Wharton*, [1915] A.C. 330, at p. 343.
[4] *Great West Saddlery Co.* v. *The King*, [1921] 2 A.C. at p. 120.
[5] *Great West Saddlery Co.* v. *The King*, [1921] 2 A.C. at pp. 115, 123.

Provincial Powers of Incorporation.—The incorporation of companies with provincial objects is one of the exclusive powers of the Provinces, though, as seen above, the exclusive character of the power is annulled by the Dominion power and practice of incorporating companies, which in fact do not intend to carry on business in more than one Province. The essential difficulty, however, arises as to the result of the restriction implied in the words " provincial powers." The Dominion view of the Act was simple; the Provinces, it was held, should merely incorporate companies which were intended to carry on business in one Province, all other company incorporation belonging to the Dominion, and at one time this view was upheld by the process of disallowing or insisting on amendment of provincial Acts which disregarded this local restriction. The Provinces denied the Dominion claim; two main grounds were alleged in favour of the view that a provincial company need not be restricted to business within the province. In the first place " provincial objects " might be held to denote objects not falling under the specific powers of the Dominion, so that a provincial company, *e.g.* dealing in grain, might do so in any province under its charter. But this interpretation must now be regarded as definitely impossible; the Judicial Committee evidently regard the limitation as local.[1] Secondly, and more plausibly, it was contended that, while the powers conferred by the Province were local, the creation of the company brought about the existence of a juristic person, which by the comity of nations could be recognized by other Provinces or countries and carry on business there under its provincial incorporation. This contention was met by the argument that to act outside the Province must be *ultra vires* the company since it owed its existence to a provincial statute, which could only incorporate for provincial objects and which therefore could not possibly confer the capacity of exercising power beyond the provincial limits.[2]

The New Doctrine of the Judicial Committee.—The argument against the provincial claim rested in the main on the principle laid down by the House of Lords in *Ashbury Carriage Co.* v. *Riche*,[3] defining the position of British statutory companies, and both sides to the controversy in Canada were agreed in regarding all Canadian companies, Dominion or provincial, as statutory. There were, however, three different methods in vogue as to creating companies:

[1] *John Deere Plow Co.* v. *Wharton*, [1915] A.C. 330, at pp. 339, 340.
[2] See *In re Companies*, 48 Can. S.C.R. 331. [3] L.R. 7 H.L. 653.

special Acts of Parliament; incorporation by memorandum under general Companies Acts; and the grant of letters patent under the provincial seals by the Lieutenant-Governors, or in the Dominion by the Secretary of State under his own seal. Incorporation by memorandum prevailed in British Columbia, Nova Scotia, Prince Edward Island, Alberta and Saskatchewan, while letters patent were issued in the Dominion, Ontario, Quebec and Manitoba. The matter came before the Judicial Committee on a case *Bonanza Creek Gold Mining Co.* v. *The King*,[1] involving a company formed under the law of Ontario by letters patent, a fact which was decisive of the result. The company had carried on mining in the Yukon, and in a dispute with the Dominion Government the latter alleged that its business out of the Province was wholly *ultra vires*. The Dominion action had the appearance of some measure of harshness to the company, and it has been suggested that this consideration affected the decision of the Judicial Committee. At any rate, the Court adopted a line of argument which had not been suggested in Canada: it fastened on the form of the charter as given under the royal prerogative of issuing charters; it held that this was part of the prerogative power which had passed to the Lieutenant-Governors under the constitution of the Dominion; that the Ontario statute was merely a recognition of the prerogative right, and that the result of the exercise of the power was to create a corporation to which the doctrine of *ultra vires* did not apply. Such a corporation had the powers of a natural person, and therefore could operate as well without as within the limits of the Province, provided of course the right to operate without the Province was conceded by the authority of the place of operations. The operations of the Bonanza Company in the Yukon were, therefore, lawful as not prohibited by any law in force in the Yukon, in which indeed a licence had been issued to the company, and the governmental objection to the action by the company failed. Though it has been suggested[2] that the wording of the judgment may indicate a distinction between the powers of the older Provinces which existed before federation and those created by Canada, it is not at all likely that this view is valid. All the Provinces, it appears certain, have the power by appropriate legislation to confer upon provincial companies the capacity of operating outside provincial limits, though they cannot confer upon them any power beyond those limits,[3] and the provincial legislatures have not

[1] [1916] 1 A.C. 566.

[2] *Weyburn Townsite* v. *Honsberger*, 43 O.L.R. 451, at p. 465, *per* Masten J.

[3] *Bonanza Creek Gold Mining Co.* v. *The King*, [1916] 1 A.C. 566, at p. 583.

been slow to act on this doctrine. This fact reduces to very slight importance the point left undecided by the Judicial Committee, whether a company incorporated by memorandum, and therefore subject to the doctrine of *ultra vires*, can on the strength of such incorporation, under an Act making no mention of operations beyond the Province, carry on such operations even under express authority from another jurisdiction. The answer, however, is probably in the negative, as has been held in Ontario in *Weyburn Townsite* v. *Honsberger*,[1] for otherwise it hardly seems likely that the Judicial Committee would have fallen back on the prerogative. The validity of the judgment has been seriously questioned in the Dominion, on the score that the statutory enactments were intended to replace the prerogative and did so effectively.[2] It is important to note that the Judicial Committee's judgment was given before the doctrine of the supersession of prerogative by statute without express limitation was given classical exposition in *Attorney-General* v. *De Keyser's Hotel*.[3]

Effects of the Judicial Committee's Doctrine.—At any rate, the effects of the new doctrine have unquestionably been unsatisfactory. The position of a company not subject to the doctrine of *ultra vires* has been carried to its logical conclusion in Ontario in *Edwards* v. *Blackmore*,[4] which decides that there is nothing to hinder the directors of such a company engaging in any business whatsoever. This follows from the doctrine established by the English cases[5] that a common law corporation is free to do whatever a natural person can, and that restrictions in the charter of incorporation do not render acts in defiance of such restrictions *ultra vires*, though they may be a good ground for the Courts restraining them, or for a revocation of the charter by *scire facias*. Obviously security of investors is gravely placed in jeopardy by such powers. The remedy, however, seems to lie in the hands of the Provinces, for there seems no legal ground why they should not confer on their companies capacity to accept powers to operate beyond provincial limits, while subjecting them in other regards to restrictions as to the nature of their operations. The possibility of this result is indicated by the

[1] 43 O.L.R. 451.

[2] See J. Ewart, *Can. Law Times*, vol. xxxvi, pp. 697 ff.; B. Thompson, *ibid.*, vol. xlii, pp. 525 ff.

[3] [1920] A.C. 508, especially p. 539 *per* Lord Atkinson, p. 561 *per* Lord Sumner.

[4] 42 O.L.R. 105. *Cf.* J. Mulvey, *Can. Law Times*, vol. xxxix, pp. 79 ff.

[5] *Sutton's Hospital*, 10 Coke 1; *Eastern Archipelago Co.* v. *The Queen*, 2 E. & B. 856; *Rendall* v. *Crystal Palace Co.*, 27 L.J. Ch. 397.

decision of the Court of Appeal of Saskatchewan in *Canadian Bank of Commerce* v. *Cudworth Rural Telephone Company, Ltd.*, reversing the Court below.[1] The respondent company was incorporated under the Rural Telephone Act (c. 96 of the Revised Statutes of Saskatchewan) which requires companies formed under it to be incorporated and registered under the Companies Act (c. 76) and provides (s. 46) that " except in so far as varied by this Act the provisions of the Companies Act shall apply to every company organized under" the Telephone Act. S. 14 of the Companies Act confers on every Saskatchewan company the same capacity as if the company had been incorporated under the Great Seal. On the strength of this enactment the company issued promissory notes, although s. 3 of the Telephone Act, which enumerates at length the powers of companies formed under it, gives no authority to do so. The Court below, following the Ontario case of *Edwards* v. *Blackmore*, held that the general capacity given by the Companies Act remedied the silence of the Telephone Act, but the Court of Appeal reversed the judgment, holding that s. 14 of the Companies Act did not apply, or, even if it did, the provisions of the Companies Act must be held to be subject to the special limitations of the Telephone Act. If so, it may easily be held that the Companies Act would give capacity to act outside the Province, while the special Act would still subject the company to the doctrine of *ultra vires* regarding the nature of its transactions as opposed to the place of operation.

Dominion Control of Provincial Companies.—The precise extent of Dominion powers over provincial companies is a matter of difficulty. Obviously in the exercise of any of its specific powers the Dominion has full legislative power to prohibit their operations, to regulate their conduct and impose taxation on them. But there is inevitably doubt as to the powers of the Dominion under the specific heads of regulation of trade and commerce, and criminal law, and on both heads the Judicial Committee has shown the tendency to restrict closely the field of Dominion power. The question arose in a concrete form on the issue whether s. 4 of the Insurance Act, 1910, of the Dominion was *intra vires*. That section in effect prohibited the transaction of insurance business by any company or person unless under licence from the Dominion Minister of Finance, and was pronounced invalid[2] because it operated to

[1] (1922) 1 W.W.R. 287 ; B. Thompson, *Can. Law Times*, vol. xlii, pp. 497 ff.

[2] *Attorney-General for Canada* v. *Attorney-General for Alberta*, [1916] 1 A.C. 588.

deprive individuals of civil rights within the Provinces, and as regards provincial companies attempted to destroy their status—the counterpart to the decision in *The John Deere Plow Company* case as regards provincial power to affect the status of Dominion companies. Further, it asserted an authority to regulate by a licensing system a particular trade in which Canadians would otherwise have been at liberty to engage within the Province and such powers could not be treated as regulation of trade and commerce. It was also impossible to secure the same result by use of s. 70 of the act which imposed a penalty on persons carrying on insurance without a licence, since this was not true criminal legislation, but an effort to effect indirectly what directly was pronounced invalid.[1]

Provincial Powers over Companies of other Provinces.—If, as seems to be clearly the case, a provincial company has no more at most than capacity to accept authority *ab extra* to act outside the provincial limits, then it follows that by refusing such authority any Province may prevent a company formed in another Province from carrying on operations within it, although, of course, such refusal in no way affects the status of the company.[2]

Foreign Companies.—The question of Dominion and provincial control over foreign companies, not being alien companies, has not raised so much controversy as that of the position regarding alien foreign companies. The constitution ascribes to the Dominion exclusive power regarding naturalization and aliens, and this authority was invoked in the controversy over the Insurance Act, 1910. The question was there asked whether s. 4 of the Act operated to prevent an insurance company incorporated in a foreign State from carrying on business in Canada without a licence from the Minister of Finance, if such carrying on of the business was confined to a single Province. The Judicial Committee replied[3] that the Dominion Parliament had the power to require a licence in such a case if the legislation were properly framed, and gave as the heads authorizing such legislation the Dominion powers regarding the regulation of trade and commerce and of aliens. It is instructive to note this

[1] The attempt of the Dominion to secure control over insurance by an amendment of the Criminal Code by c. 26 of the statutes of 1917, provincial companies being exempt, must be deemed of dubious validity in view of the decision *In re Board of Commerce Act*, [1922] 1 A.C. 191. *Cf.* Garrett, *Can. L.T.* vol. xxxviii, pp. 469 ff.

[2] *Bonanza Creek Gold Mining Co.* v. *The King*, [1916] 1 A.C. 566, at pp. 578, 583, 585.

[3] *Attorney-General for Canada* v. *Attorney-General for Alberta*, [1916] 1 A.C. at p. 595.

coupling of heads ; it definitely disposes, taken in conjunction with *Cunningham* v. *Tomey Homma*,[1] of the wide language of the *Union Colliery Co.* v. *Bryden*,[2] which in terms ascribed to the Dominion exclusive authority in all matters directly concerned with the rights, privileges and disabilities of aliens resident in the Canadian Provinces. The Insurance Act, 1917, of the Dominion based on the judgment, requires alien companies to take out a licence, incorporates them as Dominion companies, and regulates their contracts. Would such legislative enactments override provincial laws contrary to their provisions ? The answer must surely be in the negative, since an affirmative reply involves the absurdity that the Dominion can thus enable aliens to escape rules binding even on ordinary Dominion companies. As against the Provinces it seems that the most the Dominion can do is to give alien companies the status of Dominion companies, and thus ensure them all advantages which such companies have.

[1] [1903] A.C. 151, at p. 157. [2] [1899] A.C. 580, at p. 587.

TRIAL BY JURY.

[*Contributed by* Miss Monica M. Geikie Cobb.]

There is a tacit assumption in the familiar phrase "right to trial by jury," which is greatly at variance with the facts so far as civil actions are concerned. For this reason it is of interest to examine the true position at the present day, and the changes by which it has been brought about.

Such an assumption is based, as indeed most generalizations may be said to be, upon a foundation of fact, and in this case perhaps upon a wider, deeper and more solid foundation than usual. For it is eight centuries and more since the first introduction of the system into England, and not much short of that period since the method was established as a matter of right in the provisions of Magna Carta. Since then there has been no question, so far as the common law courts are concerned, as to trial by jury being an integral part of procedure. Variations there have been, and perhaps there must continue to be, in the jury's precise function, whether as protector of the weak, upholder of peace and order, or opponent of unjust and oppressive laws; but as to its existence there has been no question. Actions at Chancery, it is true, are and have throughout the history of equity been heard by a judge alone, whatever the nature of the case, be it the construction of the terms of a deed, or an action alleging fraud (for the difference has been one as to the procedure of the Court, not of the nature of the action to be tried). But whether it be from the technical nature of the cases, or from whatever cause, the lay litigant has been more familiar with the common law courts, and hence perhaps has grown the somewhat possessive feeling towards the jury.

Be this as it may, such was the position until the Common Law Procedure Act of 1854. By that Act, the introduction of which was preceded by a Royal Commission, an innovation was brought about in that it was provided that, where both parties consented to such a course, an action might be tried by a judge sitting alone, and further rendering reference to arbitration compulsory in cer-

tain matters of account. But the Act went no further (and this for reasons to be stated hereafter) than to provide for these two classes of actions, leaving trial by jury as the normal procedure. The introduction, however, of even these two exceptions was the first step in a line of development leading to far-reaching results, such results being in the main brought about through the agency of rules of procedure rather than through legislative enactments as such.

The next step is to be found in the Judicature Act of 1873. By ss. 56 and 57 of that Act provision was made for the reference of matters for inquiry and report, and also of matters requiring prolonged examination of documents or accounts, or scientific or local investigation. But still, nothing in this Act or in the rules scheduled to the Acts of 1873 or 1875 altered the main rule.

The critical change came with the *Rules of the Supreme Court*, published in 1883 (rules 2–7 of Order XXXVI). By rule 2 it was provided that either party should be entitled to a jury in actions for slander, libel, false imprisonment, malicious prosecution, seduction or breach of promise of marriage; by rule 3 that cases assigned to the Chancery Division should be tried by a judge sitting alone unless otherwise ordered; by rule 4 trial by a judge alone might be directed in cases which, previous to the passing of the Judicature Act, 1873, could be so tried without the consent of the parties; by rule 5 a similar method of trial was provided for cases within s. 57 of the Act of 1873; by rule 6 that in any other cause or matter upon the application of any party for a trial with a jury an order should be made for a trial by a jury; and by rule 7, that unless rules 2 or 6 apply, the mode of trial should be by a judge alone.

When these rules are considered corporately it is clear that a complete reversal of the former position has been brought about. In the first place, the cases in which a party is entitled to a jury as of right and upon mere notice are limited to those enumerated in rule 2, and, secondly, there is to be trial by a judge alone unless some special reason exists for a jury; in other words, trial by a judge alone is the rule, by a jury the exception.

A further limitation crept in during the redrafting of the rules from time to time. Rule 2 was abolished and a new rule substituted by which, unless an application is made for a jury within the time prescribed by (new) rule 6, the hearing will be by a judge alone. This means that even where a jury is still of right, that right will be lost unless an active step is taken for its exercise.

The matter was next dealt with by the Legislature in the Juries Act of 1918 (8 and 9 Geo. V, c. 23). This was a measure brought about by war conditions, and in consequence of the shortage of man power. It was enacted solely for the period of the war and six months after, and as a war measure is of no practical concern now. But it is of interest in tracing the growth of the restrictions on trial by jury, for it adopts the position as left by the rules and recognizes for the first time in a legislative enactment trial by a judge alone as the norm, with trial by jury as the exception. It provided, that is to say, that trial should be by a judge alone save in those cases formerly covered by rule 2, to which it added cases in which fraud is alleged, and cases coming under s. 28 of the Matrimonial Causes Act of 1857, or probate actions to which an heir-at-law is party. It further saved the right to order a trial by two or more judges, a judge with assessors, an official or special referee with or without assessors or an officer of the Court. But of more interest here is the implication in the provision (s. 1 (*c*)), which gives power to a Court or judge to order a trial by jury on the application of one party, when in the discretion of the Court or judge it is a case more fit to be tried with a jury than without. It is unnecessary here to go into the provisions made for County Courts, and other inferior Courts, since it is only the general principle which is under discussion. For a similar reason it is unnecessary to treat of the Sex Disqualification (Removal) Act of 1919, and the rules made thereunder in consequence of which women became eligible and liable for jury service. Though this is unquestionably a striking innovation it does not affect the consideration of the position of a suitor as to trial by a jury or by a judge alone.

The temporary Act of 1918 was followed by s. 2 of the Administration of Justice Act 1920 (10 and 11 Geo. V, c. 81). This at first sight seems to restore some of the former liberty in that it confirmed the right to juries in the selected group of cases to which was added, as in the Act of 1918, those cases in which there is an allegation of fraud. But it does this as one of two exceptions to the main rule and that rule is that the Court or judge may on the application of either party order a trial without a jury in any case in which the Court or judge is satisfied that the case cannot as conveniently be tried with a jury as without (the second exception being again, as in the Act of 1918, cases within s. 28 of the Matrimonial Causes Act, and certain probate actions). It is further enacted by s. 2, ss. 2,

that rules of the Supreme Court shall be made (and these were in fact made under date February 20, 1922), to enable a plaintiff in those cases where trial without a jury can be had to signify his desire for such a trial, and further providing that, subject to the judge's discretion, such an order shall be made in the absence of any application to the contrary.

It is obvious that the effect of this legislation must be still further to reduce the number of cases to be tried by a jury until the total number is but a small fraction of the number formerly so tried. Is it desirable or not to restore the jury to its former position? This of course can only be answered after an examination of the relative advantages and disadvantages of a jury trial.

Much has been said at one time or another as to these, and little remains to be said. The matter received close attention in the second quarter of the nineteenth century, when the reform of common law procedure was much discussed. Mr. Forsyth, in his *History of Trial by Jury*, published in 1850, writes as follows:

"I am satisfied that the concurrence of the people in the administration of the law through the medium of the jury greatly increases the respect and reverence paid to the judges. Everyone thinks himself competent to express an opinion upon a mere question of fact, and would be apt to comment freely upon the decision of a judge which on such a question happened to be at variance with his own. It is easy to conceive questions when much odium would be incurred if in the opinion of the public the judge miscarried in a matter which they thought themselves as well able to determine as himself. From this kind of attack a judge is now sheltered by the intervention of the jury. He merely expounds the law and declares its sentence, and in the performance of this duty, if he does not always escape criticism, he very seldom can incur censure." And again, "The tendency of judicial habits is to foster an acuteness which is often unfavourable to the decision of a question on its merits. No mind feels the force of technicalities so strongly as that of a lawyer. It is the mystery of his craft which he has taken much pains to learn, and which he is seldom averse to exercise. He is apt to become the slave of forms and to illustrate the truth of the old maxim, *qui hæret in litera hæret in cortice*. Now a better corrective for this evil can hardly be devised than to bring to the consideration of disputed facts the unsophisticated understandings of men fresh from the actual business of real life, imbued with no professional or class prejudices, and applying the whole power of their minds to the detection of mistakes or the disentanglement of artifice and fraud. The jury acts as a constant check upon and corrective of the narrow subtlety to which professional lawyers are so prone and subjects the rules of rigid technicality to be construed by a vigorous common sense."

Mr. Forsyth, it is clear, is uncompromising in his support of the jury. Further help may be found in the Royal Commission referred to above, for in their second Report, issued April 30, 1853, the Commissioners set out the arguments laid before them which resulted in their recommendation of a continuance of the jury system. These, with one exception, are equally applicable to the discussion to-day, and may be summarized as follows:

It is alleged against the juryman (*a*) that he lacks legal training; to which it may be replied that the jury do not decide on their own unaided knowledge, but are assisted by the judge on all points of law. (*b*) That the division of responsibility amongst a number weakens the sense of responsibility, and that this is the more so in the case of jurymen, who, once discharged, sink into oblivion among their fellows, and thus escape condemnation. To this no direct reply is given. (*c*) That want of permanency precludes the adjournment of a case for further inquiry, and tends to cause a verdict to be given without such information and full knowledge of the circumstances as are necessary to a just conclusion. But there is a counteracting benefit in this lack of permanency; the temporary nature of the work enables the jury to come to it with fresh interest and to retain that interest throughout the proceedings. (*d*) That there has been an extension of the jurisdiction of courts of equity to try conclusions of fact by a judge alone; to which it may be replied that this is merely to produce uniformity, and does not involve any admission as to the superiority of such a method of trial. (*e*) That justices of the peace and commissioners have jurisdiction both in criminal and civil matters without the aid of a jury; to which it is replied that this is a matter of speed and convenience (the force of this reply being that supporters of the jury system must be held to regard it solely as an expedient which in the circumstances cannot be improved). (*f*) That in County Courts when suitors may demand a jury they do not in practice do so. The reply to this seems so relevant at the present day that it should be quoted at length:

"The practice of the Courts which makes trial by a judge the rule and trial by jury the exception and consequently imposes the necessity of taking an active step to obtain a trial by jury, together with the apprehension of giving offence to the judge by so doing, has no doubt a considerable effect in preventing litigants from insisting upon trial by jury in these cases."

Then for additional positive arguments in favour: juries pay much attention and show great anxiety to arrive at a right verdict; the professional view is corrected and tempered by the opposite tendency of a lay jury, and the knowledge of this tends to keep harsh and oppressive cases out of court, whilst it also keeps the judge "alive, impartial and interested"; the system familiarizes the public with the law and popularizes it, so that its members will not be so inclined to dispute a verdict, with the further result that the public relies on justice being done; the jury bring to their consideration of the case a more varied stock of knowledge than it is possible for the judge to possess; if a jury err on facts, no less can a judge, whilst if the jury bring in a verdict against the weight of evidence there is still the remedy of a fresh trial.

The Commissioners decided that a jury was (*a*) "unnecessary" in cases which turned on the legal effect of evidence or undisputed facts, and in which the verdict of the jury must depend on the direction of the judge, and (*b*) "mischievous" in cases which it was found necessary to withdraw from the jury and submit to arbitration, "including all cases of detailed accounts in which figures and vouchers must be referred to." Accordingly they recommended the two modifications referred to above, but subject to these their decision, after consideration of all the arguments adduced, was in favour of the jury.

What else then can be said against the system? It would be hard to find a more determined opponent than a modern writer (Mr. Melius de Villiers), who says: "In the interest of right and justice the system of trial by jury should be abolished, and the sooner the better." [1] To support such an unqualified statement it is justifiable to assume that the most weighty arguments will be produced, but nothing more is found than that (*a*) the administration of justice should be both swift and sure and such as inspires universal and implicit confidence. But in what way does a jury necessarily militate against such an undeniably desirable quality of the law? (*b*) That it is said that a jury will be moved by sympathy, and that sympathy is out of place in the administration of justice. But this is a weakness which may none the less belong to a judge, and the members of a jury are likely to supply a corrective wanting in the case of a single arbiter. (*c*) That a jury may be influenced by counsel who is the "glibbest talker," but not the most profound

[1] *South African Law Journal*, vol. 35 (1918), p. 393.

lawyer. But is not this forgetting the function of the judge in a jury trial?

These propositions, not of themselves of great consequence, are reinforced in Mr. de Villiers' argument by four examples of inequitable jury verdicts. It would be unfair to accept them—or to reject them—without fuller knowledge of all the circumstances; but even if they be given full weight it is submitted that not even the most enthusiastic supporter of the jury system but would acknowledge that a jury in theory may, and in practice does, from time to time produce astonishing verdicts. But what cause exists in any sphere of life against which no particular instances can be adduced? How many verdicts are recorded each year that pass without notice because they are fair and equitable? It is submitted that this is not a case where argument from the particular to the general can be applied, and that the indignation aroused by an unfair verdict is in itself a tribute to their general level.

So far, then, it does not seem that sufficient valid reasons have appeared to justify the abolition of the system. It is true that nothing has been said as to the great practical difficulties of the cost involved, the lengthening of the hearing of a case and the demands made upon the time of jurors. The primary consideration is, of course, the attainment of justice, and, this being so, other considerations must be subordinated if the main purpose be thus fulfilled. Is this so? It may be urged that much that has been said has been of a negative character. What more can be said as to the positive value of a jury? for there can be no good purpose served in retaining a system which is merely harmless. It is obvious that the question is largely a psychological one, both objectively and subjectively, and in the latter aspect men will be inclined to draw differing conclusions from the same considerations according to their skill in analysing the complex factors of the situation and also—it is to be feared—according to their presuppositions.

A sharp line of cleavage is sometimes drawn between the jury in civil and the jury in criminal cases, but in fact the underlying principles are the same. It surely cannot go for nothing, in considering the advisability of abolishing the jury in civil cases, that a serious proposal for such an abolition in criminal cases remains yet to be made. There are occasions of national emergency, as in the recent war, when it is thought necessary to restrict the right, but there can be no question that the nation looks on such restrictions as necessary evils to be removed at the first opportunity.

Further, look to the Dominions and to the U.S.A., each with its jury system. It may be said that this is pure conservatism—perhaps even sentimentalism. It is difficult to think that there is no more in it than that. The English colonists of America may, perhaps, have adopted the system for lack of a better expedient at the time, but that will not account for its deliberate adoption many years later as an integral part of the American Constitution, yet now the right to trial by jury is incorporated in the form of express guarantees in all the Constitutions both State and Federal.

Again, if the system be, as some would suggest, a pitting of the professional against the lay mind, it would be unnatural to expect to find the former among the system's protagonists; it is unlikely they would take part in belittling the abilities and power of their own class. This view is surely negatived by such opinions as those stated by Lords Justices Bankes, Scrutton, and Atkin in a recent case in the Court of Appeal, where they expressed themselves as greatly concerned at the inroads made into the right of trial by jury—a right of which Lord Justice Atkin spoke as an " essential principle of our law, a bulwark of liberty and a shield of the poor from the oppression of the rich and powerful." (And this of an institution in origin a creation of royal prerogative for royal purposes !)

To conclude, this is not a question in which arguments can be marshalled with mathematical precision. Indeed, what one may regard as an argument for, another may rely on as an argument against the system. But it is submitted that, as no clear case can be made out on either side, the balance of advantage is heavily in favour of a continuance of the system. This indeed is all that can, or need be, said in favour of any part of any legal procedure —that in the main it secures justice and equity more than any other system would do.

If, then, trial by jury be desirable, it follows that it should be easily obtainable. This does not preclude, nor is it likely that anyone would wish to preclude, provisions being made for other methods of trial. These should be limited to special classes of cases, which cases should be clearly defined, and not left to the ambiguity inseparable from terms such as " convenience " and " discretion." Trial by jury would then once again become a right, for such a trial would be the norm, and other modes the exceptions.

THE JUDICIAL RECOGNITION OF CUSTOM IN INDIA.

[*Contributed by* LINDESAY J. ROBERTSON, ESQ.]

ALL authorities are agreed as to the great importance of custom and usage in modifying, and in some cases in wholly superseding, the established rules of Hindu and Mohammedan Law.

The existence and importance of the peculiar customs and usages to be found in all parts of India have been emphasized, over and over again, both in Acts of the Legislature and in judicial decisions.

The British Raj has, indeed, always shown the most tender solicitude not to interfere with, or to fail in giving due recognition to, such customs and usages as have become part and parcel of the rules of the communities where they prevail.

This attitude on the part of the Legislature and the Courts of Justice may best be indicated by one or two examples.

Thus, in a Bombay Regulation of 1827 it was laid down that "the law to be observed in the trial of suits shall be . . . Acts of Parliament, and Regulations of Government applicable to the case. In the absence of such Acts and Regulations, the *usage* of the country in which the suit arose. If none such appears, the law of the defendant, and, in the absence of specific law and usage, justice, equity, and good conscience alone."

Again, in the Punjab Laws Act of 1872, as regards a great variety of topics, it is enacted that the first rule of decision shall be "any *custom* applicable to the parties concerned."

The following passage illustrates the attitude adopted by the Privy Council[1]: "Their Lordships are fully sensible of the importance and justice of giving effect to long-established *usages* existing in particular *districts* and *families* in India, but it is of the essence of special *usages* modifying the ordinary law of succession that they should be ancient and invariable."

In a very early case decided in Calcutta, Grey C.J. stated, "I have no hesitation in saying that we are bound to take notice

[1] *Ramalakshmi* v. *Sivanantha*, 14 Moo., I.A. 570, at p. 585 (1872).

of any special *customs* which may exist among the Hindus, or which can be considered as the law of any particular part of the country." [1]

It will be noticed, on reference to the words in italics occurring in these illustrations, that the terms "custom" and "usage" are used as though they were interchangeable and synonymous.

But are they synonymous? Turning to Lord Halsbury's *Laws of England*, vol. x, p. 218, we find "custom" described as "a particular rule which has existed either actually or presumptively from time immemorial, and has obtained the force of law in a particular *locality*, although contrary to, or not consistent with, the general common law of the realm." And again: "Custom is unwritten law peculiar to particular *localities*."

Turning now to the term "usage," we find the same authority (pp. 248–50) saying: "A usage may be broadly defined as a particular course of dealing, or line of conduct generally adopted by *persons* engaged in a particular department of business life. . . ." "A *usage* differs from an immemorial *custom* in this respect, for the latter (*i.e.* the custom) *must be local*" (*vide* p. 250). On the other hand, a usage may extend beyond the limits of the realm, or only within a local area, however small; or, again, a usage may extend throughout all engaged in a particular business, or only exist in respect of a very limited class" (*ibid.*, p. 250).

Turning back for a moment to our illustrations, we find that the Bombay Regulation speaks of "the usage of the country"; the Punjab Act of the "custom of the parties."

But the judges cannot complain of the Legislature in this respect, for the Privy Council refer to "the usages of particular districts," and the Calcutta Chief Justice speaks of the "customs of Hindus."

This laxity and variance in the use of terms is by no means without its dangers and inconveniences. To quote Lord Halsbury's compilation again (p. 221): "Immemorial local customs are clearly distinguishable from particular trade or local usages, although in practice frequently confused with them . . . they lack three of the distinguishing features of customs properly so called."

"First: they (*i.e.* usages) need not have existed from time immemorial. Second: they need not be confined to a particular locality. Third: usages however extensive, if contrary to positive law, will not be sanctioned by the Courts, while customs may be inconsistent with the general law of the realm." And again at

[1] *Jagmohun* v. *Srimati*, Montriou's *Cases of Hindu Law*, p. 596 (1831).

p. 252: "It is no objection to usage that it cannot be shown to have existed from time immemorial. Evidence of such existence is not required."

This discrimination in the use of the terms "custom" and "usage" is doubtless much to be desiderated, but it can hardly be said to have been always observed even by the most distinguished judges. For instance, Blackburn J., in *Crouch* v. *Crédit Foncier*, is reported to have said [1] (the italics, of course, are not in the originals from which the quotations are taken):

"We have only further to consider whether the *custom* or practice of *trade* to treat such instruments as negotiable makes any difference.

"Incidents . . . may be annexed by *custom*, however recent, . . . provided they are tacitly incorporated in the contract. If the wording . . . excludes this tacit incorporation no *usage* can annex the incident."

The translators of the ancient Hindu Legal Codes have suffered from the same infirmity.

Thus, to take the famous passage of Manu (chap. i, s. 108), which perhaps is more often quoted than any other—"Immemorial *usage* is transcendent law"—followed by s. 110: "Holy sages, well knowing that law is grounded on immemorial *custom*, embraced, as the root of all piety, good usages long established."

The words "usage" and "custom" in these passages are adopted interchangeably by translators. Indeed, Mr. Mayne, in his work on Hindu Law,[2] quotes Sir William Jones as translating the earlier passage, "Immemorial usage," whereas in Mr. Grady's edition [3] it is translated "Immemorial custom."

Similar instances could be multiplied indefinitely from translations of other Codes, but this one illustration is sufficient to show that no distinction is recognized by translators or text writers between custom and usage, and it is also sufficient to demonstrate the supreme importance of custom or usage in Hindu Law. As an eminent Punjab judge once put it, "Hindu Law is itself a great system of customary law, eventually reduced to writing as a code of substantive personal law."

With regard to this use of the expression "personal law," an important pronouncement has recently been made by the Privy Council in *Balevant Rao* v. *Baji Rao*.[4] The head-note to that case

[1] L.R. 8 Q.B. 374, at p. 386 (1873). [2] Mayne's *Hindu Law* (1914), p. 47.
[3] Grady's edition of Sir William Jones's translation of *Manu* (1869), p. 12.
[4] 47 I.A. 213 (1920).

runs as follows: "The particular doctrines of Hindu Law recognized in a province of India become part of the status of every family governed by them, and continue to govern the family upon migration to a province where a different doctrine prevails, unless there is proved a renunciation of the original law for that of the place migrated to. Decisions given by the Courts after the migration declaring what was the correct doctrine in the place migrated from, affect the migrated members, but not *customs* there incorporated into the law after the migration."

This case shows how, in India, a Hindu or Mohammedan carries his personal law with him wherever he goes, and also that it can be renounced.

The Punjab Court has recently emphasized the fact that this personal law, by which is generally meant the law of the particular school or sect to which the party belongs, must, in that province at least, take a secondary place. Thus, in case 110, P.R. 1906, the Court is reported to have decided that "among parties who generally follow the principles of customary law the Court is justified in falling back as a last resort on their personal law (*i.e.* Hindu or Mohammedan Law) for the decision of the point at issue, if no definite rule of the former law (*i.e.* custom) applicable to the case before it can be found."

This was the decision of the Full Bench as embodied in the head-note, but Robertson J., in a passage which Lord Buckmaster thought so aptly and expressly declared the true relation of the necessity of proof as between customary and established law that he embodied it in his judgment,[1] viewed the matter in a distinctly different light. He said: "In all cases it appears to me under this Act, it lies on the person asserting that he is ruled in regard to a particular matter by custom, to prove that he is so governed, and not by personal law, and further, to prove what the particular custom is. There is no presumption created by the clause in favour of custom; on the contrary, it is only when the custom is established that it is to be the rule of decision. The Legislature did not show itself enamoured of custom rather than law, nor does it show any tendency to extend the 'principles' of custom to any matter to which a rule of custom is not clearly proved to apply. It is not the spirit of customary law, nor any theory of custom or deductions from other customs which is to be a rule of decision, but only any

[1] *Abdul Hussein Khan* v. *Bibi Sona*, 45 I.A. 10 (1917), quoting 1906 P.R. No. 110 p. 410.

'custom applicable to the parties concerned which is not . . .'" (contrary to justice, etc.), "and it therefore appears to me clear that when either party to a suit sets up 'custom' as a rule of decision, it lies upon him to prove the custom which he seeks to apply; if he fails to do so, clause (*b*) of s. 5 of the Punjab Laws Act applies, and the rule of decision must be the personal law of the parties subject to the other provisions of the clause." [1] It will be observed that, while their Lordships affirmed the correctness of the principles enunciated in the judgment of Robertson J., they did not express any dissent from the decision of the Full Bench.

One further point should be noted in this important Privy Council case. At p. 14 Lord Buckmaster is reported as saying: "In England, if a custom were alleged as applicable to a particular district, and the evidence tendered in its support proved that the rights claimed had been enjoyed by people outside the district, the custom would fail. This principle ought not to be applied . . . here."

Enough has been said to establish not only the important part played by custom in India, but also to indicate the complexity of the problems which arise in respect to its legal recognition and enforcement.

Any exhaustive study of the methods adopted by Courts having jurisdiction in India to solve these complexities would be impossible within the limits of this discussion, but a few illustrative cases may be referred to.

Sir Barnes Peacock in Hurpursad's case [2] described "a custom" as being "a rule which in a particular family, or in a particular district, has from long usage obtained the force of law. It must be ancient, certain, and reasonable, and being in derogation of the general rule of law, must be construed strictly."

The effect of this is to apply to an alleged custom in India the tests laid down for the determination of the validity of a custom in England.

On a collocation of very numerous cases, English and Indian, it would appear that in order to give effect to a custom in India it must, in strict law, fulfil the following conditions, and possess the following characteristics. It must be (1) ancient, (2) definite, (3) continuous, (4) notorious, (5) reasonable. It must not be (1)

[1] S. 5 of the Punjab Laws Act of 1872, clause (*a*), makes custom the rule of decision; clause (*b*) makes Mohammedan Law the rule of decision among Mohammedans except when modified by custom.

[2] *Hurpursad* v. *Sheo Dyal*, L.R. 3 I.A. 259, 285.

opposed to express enactments of the Legislature, nor (2) opposed to (*a*) morality, (*b*) public policy, (*c*) justice, equity or good conscience. Further, it must be (1) established by clear and unambiguous proof, (2) construed strictly.

It may be said at once that only a very few, if any, of the customs given effect to in India have fulfilled in their entirety all these conditions, or exhibited all these characteristics. Mr. Mayne, when discussing this topic, points out that there are four different ways in which questions of usage arise in India. The second of these is as regards those who profess to follow Hindu Law generally, but who do not admit its theological developments; and the fourth is as regards persons formerly bound by Hindu Law, but to whom it has become inapplicable.[1] We are not concerned here with the two other ways in which such questions arise.

A very remarkable instance of the second class of cases enumerated by Mr. Mayne came before the Privy Council as recently as 1908.[2] The appeal raised the point of the validity or otherwise of the adoption of a daughter's son, which under the general rule of Hindu Law was indisputably invalid.

It has been pointed out by one of the Judges from whom the appeal was preferred that the importance of the case, and its peculiar significance, lies in the fact that the parties to the suit were orthodox, twice-born Hindus—that is, they belonged to the very class most strictly bound by the Hindu texts. No doubt such adoptions were in fact commonly recognized in the Punjab; on the other hand, the texts forbidding similar adoptions had been held by the Privy Council, only a few years before, to establish positive prohibitions, and to be not merely monitory. Yet in spite of these considerations, and of the fact that no allegation of a custom was put forward or suggested in the pleadings, their Lordships felt themselves entitled to hold that the District Judge was right in refusing to allow the appellant defendant to raise the point in his closing address. In other words, the Privy Council gave effect to a custom in direct derogation of the general law, which had never been pleaded and in support of which no evidence was adduced.

One other very leading case must be referred to in this connection. In *Abraham* v. *Abraham* [3] the parties were at the time of the suit native Christians, and questions arose as to the rules of inheritance by which they were governed. In the absence of any law then

[1] Mayne, *Hindu Law*, p. 51. [2] *Rup Narain* v. *Inst. Gopal*, 36 I.A. 103 (1908).
[3] 9 Moo. I.A. 195 (1863).

prescribed by Statute, the Privy Council applied the law by which, as the evidence showed, the particular family *intended* to be governed. In the course of their judgment it was laid down that, upon the conversion of a Hindu to Christianity, the Hindu Law ceases to have any continuing obligatory force upon the convert:—"The convert may renounce the old law by which he was bound, as he renounced his old religion, or he may abide by the old law, notwithstanding that he had renounced the old religion. . . . The convert . . . may by his course of conduct . . . have shown by what law he intended his rights to be governed. He may do so either by attaching himself to a class which . . . has adopted . . . some particular law, or by having himself observed some particular usage or custom."

This is, of course, an instance of the fourth class of cases enumerated by Mr. Mayne, in which questions of custom arise. The relevance of these cases to the present discussion lies in the fact that in each case the rights and obligations of the parties were held, not to depend on any recognized code of law, Hindu or Christian, but solely on the customs adopted by the parties themselves or by their ancestors. And the last case (*Abraham* v. *Abraham*), and numerous other cases fully establish the proposition that a family converted from one religion, the adherents of which are normally governed by a defined personal law, to another religion whose adherents are similarly governed, can at their option retain part of their previous personal law, *as a custom* ; or, if they prefer it, adopt *in toto* the personal law of the adherents of the religion to which they have been converted. Such being the state of the law, there has naturally been much uncertainty as to the period to which the Court must go back in order to establish a valid custom.

Sir Charles Grey C.J., in the Calcutta case already referred to, fixed the year 1773 as the date to which the Court must extend its inquiries in order to find the existence of a valid custom. But he added, "I admit that a usage for twenty years may raise a presumption of a usage existing beyond 'living memory.'"

As to this decision, Mr. Banerjee (at p. 229 of his *Tagore Lecture*, 1876), points out that the reason assigned for this rule is that since that date the power of making laws having become vested in the British Legislature, no change could be effected in the Hindu Law by any other agency. In the course of his argument, refuting this view, he points out that in Hindu Law not only is it unnecessary to trace back the existence of a custom to any definite date, but

even the indefinite condition of being ancient may, in favour of some classes of cases, have to be dispensed with. "Thus, suppose that a new Hindu sect come into existence . . . and adopt a form of marriage different from the orthodox form: it would be going too far to hold that these marriages are void, and thus bastardize a whole community." And he strongly urges that a custom "ought to be recognized as valid when, either from observance for a long time, or from adoption by a considerable and organized body of persons, it has influenced the conduct of people to such an extent that to disregard it, would be to disappoint well-grounded and reasonable expectations of men."

The Allahabad High Court has indeed frankly stated[1]: "We cannot in these provinces apply the principles of the English Common Law, that a custom is not proved if it is shown not to be immemorial. To apply such a principle . . . would be to destroy many customary rights of modern growth in villages and other places. It would be inexpedient . . . to attempt to prescribe any such period."

In a recent Bombay case,[2] Sir N. MacLeod C.J. expressed his opinion to be that "if the evidence shows that for a certain number of years—and some cases appear to lay down as a useful guide a period of twenty years—there have been a number of instances in which the alleged custom has been recognized, the presumption arises . . . of immemorial usage." Two English cases were cited by the learned Chief Justice in support of this proposition.

The first was *King* v. *Jollife* (2 B. &. C 54), in which the right of the steward of a Court-leet to nominate for a summons to a jury was disputed. The passage referred to by MacLeod C.J. was no doubt that in the judgment of Abbott C.J., where he says: "A regular usage for twenty years, not explained or contradicted, is that upon which many public and private rights are held." But he was careful to point out that in such a case "if the custom be against any known rule or principle of law, it cannot stand, however great its antiquity may be." And Holroy J. added: "The question is whether the custom found be contrary to law and therefore void."

But in the Bombay case the validity of the adoption of an orphan was upheld by custom, though nothing could be more clearly contrary to Hindu Law.

The other English case relied on was that of *Brocklebank* v.

[1] *Kuar Sen* v. *Mamman*, 17 All. 87 (1895).
[2] *Purshotum* v. *Venichand*, I.L.R. 45, Bom. 754 (1920).

Thompson (1903, 2 Ch. 344, at p. 350). In that case Joyce J., relying on *King* v. *Jollife*, held that a regular usage of twenty years, if unexplained and uncontradicted, was sufficient to warrant a jury in finding the existence of an immemorial custom. But the "custom" alleged in that case was merely the claim to use a church-way, which has been judicially described as a quasi-easement, and has little or no relevance to the case of the customs and usages under discussion.

It is in any case obvious that these two English cases form a very unsatisfactory basis for any rules formulated or to be formulated for determining the period over which, in India, the evidence in favour of a custom must extend.

In two fairly recent cases [1] their Lordships of the Privy Council have held, where the validity of a Jain adoption was in dispute, and the evidence in favour of the alleged custom was limited both as to number of instances and locality, that though it fell short of satisfactory proof of the custom, yet as between the parties it was sufficient to justify a finding that the adoptions were valid. That is to say, they held in effect that, though the validity of a custom of adopting married Jains was not satisfactorily established, the validity of the adoption of the particular married Jains concerned was established. Other instances in which the conditions and characteristics held in England to be essential to the validity of a custom, have been departed from or ignored in India, could be indefinitely multiplied.

The fact appears to be that neither "custom" nor "usage," in the sense in which these terms are employed in English Law, are appropriate when applied to the personal law adopted by a particular sect, family or community in India. Such a thing as an option to an individual to choose whether he would be governed by one set of rules of inheritance, or by a totally different set, as was contemplated in *Abraham* v. *Abraham*, is utterly alien to the conceptions of English Law. When a Mohammedan community is found to be governed by the Hindu rules of inheritance, it cannot be said that these are "customs" in the English sense. In the first place, the rules are in no sense local. Members of these communities are to be found not only all over India, but all over the East, and the date of their conversion can be assigned within fairly narrow limits.

[1] *Rupchand* v. *Jambu*, 37 I.A. 93 (1909), and *Chimaulal* v. *Hari Chaud* 40 I.A. 151 (1913).

Neither are they "usages" in the sense in which that term is defined in Lord Halsbury's compilation. Most of the usages given effect to among Hindus and Mahommedans have little or no connection with trade or business, and very many of them are purely local. It can hardly be denied that much harm has already resulted, and much more may yet accrue, through the failure to recognize these fundamental differences. All will agree with Mr. Mayne that, at one time at least, far too much stress was laid upon the ancient texts by which the people of India, more especially the Hindus, were supposed to be bound, to the neglect of the customs and usages by which they were really governed. It ought to be possible to frame rules by which, without too great laxity, the actual usages in force in any community, sect, or family could be given effect to, without having recourse, even nominally, to the tests required by English Law to validate a custom.

Without going so far as to permit any community, sect or family to be a law unto themselves, the ultimate test might surely be, what rules are now recognized as binding on them, not for how long a time they have been observed.

This, it is submitted, is only an extension of the advice given by the Privy Council in the famous Ramnaad case.[1]

"The duty, therefore, of a European judge who is under the obligation to administer Hindu Law, is not so much to inquire whether a disputed doctrine is fairly deducible from the earliest authorities, as to ascertain whether it has been received by the particular school which governs the district with which he has to deal, and has there been sanctioned by usage."

It may well be that the vagueness and uncertainty as to what really constitutes a valid custom, which is discernible in the Indian decisions, has not been altogether an evil. It has rendered possible, capriciously it may be, but still not altogether ineffectually, the recognition of changes in the customs and outlook of the people of India which might have been rejected had the more rigid rules of English Law been rigorously adhered to. But, from a legal point of view, nothing can be more deplorable than the uncertainty such confusion induces as to the rights of individuals, and even of whole communities.

On the assumption that the present state of the law in England and India has been approximately accurately indicated, the result of this discussion would appear to be:

[1] 12 Moo. I.A. 397.

1. That the distinction drawn by English lawyers between "custom" and "usage" does not exist in India.

2. That there being in England no such thing as a "personal law," in the sense in which that expression is used in India, English rules as to the necessary proof and characteristics of customs and usages, cannot usefully be applied.

3. That the confusion manifested in the English law on the subject, becomes worse confounded when sought to be applied in Indian Courts.

4. That "usage" and "custom" being really synonymous terms as applied to the personal law of a Hindu or Mohammedan, their identity should be judicially recognized, and appropriate rules framed for their enforcement, without regard to the distinctions and refinements of English Law.

NOTES ON EGYPTIAN LAW.

[*Contributed by* Sir Malcolm McIlwraith, K.C.M.G., K.C.]

Criminal Law Reform in Egypt.—The April number of *L'Egypte Contemporaine* (No. 65, April 1922) contains two articles on this subject, one by Mr. J. E. Marshall, a Judge of the Native Court of Appeal, and the other by Mr. J. Wathelet, a Belgian jurist, and one of the Government counsel. Mr. Marshall criticizes severely the Egyptian Penal Code on the somewhat strange ground that "there must be a fault somewhere, or the penal laws would have justified their existence by eradicating crime." No doubt there are many faults in the Egyptian penal laws, as there are in those of most other countries, but have penal laws anywhere succeeded in "eradicating crime"? Would it not, indeed, be difficult to find any country of importance where crime is not, more or less continuously, on the increase? Mr. Marshall's own panaceas are the punishment of flogging, the introduction of the jury system, and the establishment of a Court of Criminal Revision, which is to be organized "in such perfection as may be humanly possible, and in such condition as may suffice for the needs of the future, as well as the present." Few mundane legislators reach such a standard.

Flogging, for grave crimes, in lieu of, or in addition to imprisonment has frequently been advocated in Egypt; and with an ignorant callous peasantry, for whom imprisonment holds no terrors and scarcely any hardships, it obviously has much to recommend it. But poignant memories among the people of the great abuses of the "kourbash" (whip), by which Egypt, in pre-Occupation days, was largely governed, have hitherto been too strong to permit of its revival by a legislative measure, in any form whatever. As to the jury system, there would, assuredly, be great advantages in training the fellaheen to take an intelligent and responsible part in the administration of the criminal law. But, up to the present, whenever the intervention of a popular element in criminal trials, in however restricted a degree—as in the case of lay Assessors for the Assize Courts—has been proposed by British administrators, such proposals have met with violent and determined opposition from the most enlightened and leading Egyptians themselves, and notably from the Legislative Council, who are, after all, the best judges of the morality and capacity of their own countrymen. It is very doubtful if it will be found that their views have radically altered under the new conditions, which involve the withdrawal of many safeguards.

Finally, as regards the Court of Criminal Revision, this, again, is an old controversy. Mr. Marshall endeavours to support it by the argument that, inasmuch as England considers a Court of Criminal Appeal indispensable, a relatively backward country such as Egypt can hardly maintain that it is unnecessary. The argument is, however, by no means conclusive, for Mr. Marshall omits to take into consideration, or at any rate to mention, that a large part, probably the main part, of the task of the Court of Criminal Appeal in England, viz. all that relates to the decision of points of law, is performed in Egypt, quite efficiently, by the Court of Cassation. The English Court of Criminal Appeal very rarely interferes with findings of fact. Incidentally, the writer of this paper does not help his case, nor strengthen his authority, by the assertion that " in Egypt, every change in the criminal law " has had, as a result, that " a greater length of time has elapsed between the commission of the crime and its punishment," for the most cursory examination of the criminal statistics for the ten years which succeeded the great change made by the establishment of Assize Courts would prove this statement to be quite remarkably inaccurate and misleading.[1] A more practical, if less ambitious, contribution to the discussion of remedies for an admittedly grave state of affairs, is Mr. Wathelet's very interesting paper on the " Correctionalization " of crimes. The present position is that, owing to the great increase of crime in Egypt of late years, the trial-lists of Assize Courts are choked with a mass of offences which, though technically " crimes " in Egyptian law (*i.e.* roughly, felonies, as distinguished from misdemeanours), and, as such, triable by Assize Courts only, are, in the particular circumstances of the case, of relatively minor importance. Such offences would, in France or Belgium, under the system known as " correctionalization," be withdrawn from the Assize Courts and sent to the Correctional Tribunals, which deal with misdemeanours only. It is proposed that a similar system should be adopted in Egypt, and the proposal seems worthy of serious consideration. The danger lies, of course, in the great discretion thus entrusted to committing magistrates, who may fail to discriminate with judgment. But in such matters some risks must be run, and the situation is clearly such that it has become imperative to find an issue.

Land Transfer in Egypt.—The March number of *L'Egypte Contemporaine*—the admirable organ of the Egyptian Society of Political Economy, Statistics and Legislation—is entirely devoted to the reform of the land laws by the introduction of the system of registration of title, generally known as the " Torrens system," in lieu of the existing system of registration of deeds, without any official guarantee of their accuracy or

[1] " The interval between the commission of a crime and the final sentence on the offender was reduced by the new system from an average of 230 days to 71 (see Report for 1905, p. 16). Though it has now unfortunately gone up to 106 days, it is still less than half the time formerly required for the judicial repression of a crime " (see Report for the year 1915 by the Judicial Adviser, p. 32).

validity. This is a matter which, for many years, has closely engaged the attention of the Egyptian Government and its principal legal advisers. It is indeed manifest that a sound, simple and expeditious system of land transfer must be a matter of paramount importance in a community the mass of whose population lives by agriculture, and the aggregate wealth of which resides, almost entirely, in the value of its urban and rural land. Still more is this the case in a community whose agricultural classes are almost entirely uneducated, very quarrelsome and litigious (the cause-lists of the tribunals are literally choked with land claims), and deplorably addicted to the forgery of title-deeds and the fraudulent removal of landmarks. For such a community a system of official registration of title, with a guarantee of its validity, after an administrative investigation, presents obvious and substantial advantages over one in which the registration of deeds implies no proof of title. For these reasons the adoption of "livres fonciers," *i.e.* the Torrens system, was, so far back as 1904, strongly urged by the Egyptian Government on the Foreign Powers (without whose assent it was powerless to act, so far as foreigners are concerned) and the official reports of the Judicial Adviser at that time (1904–1908) contain lengthy arguments in favour of its adoption. The matter was referred to an International Commission which, in the latter year, reported favourably on the scheme ; but, owing mainly to purely political opposition, the Government failed to secure the necessary unanimity among the Powers, the proposals were shelved, and the existing abuses and inconveniences perforce continued to subsist. Then came the war, and all such questions remained dormant. At length, when the great struggle seemed to be nearing its end, the project was taken up once more, in 1917. A commission was appointed to study it afresh, and this body has recently issued a series of six reports, addressed to the Council of Ministers, which recommend action in the direction of the original proposals, though on more tentative and gradual lines. The present position of the question is set forth in two papers, contained in the publication referred to at the commencement of these observations, one by an Italian jurist and ex-judge of the Mixed Tribunals and formerly one of the Government lawyers (Mr. Bernardi), and the other by the Director of the Cadastral Survey in Egypt (Mr. Sheppard). This latter paper constitutes a particularly lucid and exhaustive exposition of the whole problem, and contains practical details of the manner in which the proposed reforms would work, which are of special value and cannot fail to prove of great interest to all concerned with this complicated subject. So far as it is possible to judge from these documents, the present situation does not appear to differ very materially from that with which the Egyptian Government and its advisers had to deal a dozen years ago—save that recent events are scarcely likely to facilitate, for some time to come, the introduction of far-reaching innovations of any kind. Now, as then, the main difficulty of establishing any system of guaranteed title is the inadequacy, for this purpose, of the existing Cadastral Survey.

As Mr. Sheppard points out, that survey is a revenue Survey, for the purpose of ascertaining the persons liable for the payment of land tax—whereas the tax-payer and the owner are not necessarily the same person. Moreover, the value of the existing maps is greatly diminished by the fact that they have not been kept up to date, 40 per cent. of the country having been surveyed upwards of sixteen years ago. Yet the standard of accuracy in a Cadastral Survey, required as a basis for the establishment of Land Registers, with a Government guarantee of title, requires to be a very high one, especially in view of the peculiar characteristics of Egyptian holdings. These are both extremely numerous (in proportion to the area and population), small in extent, and exceedingly ill-defined. There exist, indeed, in Egypt to-day, some three million individual holdings ; only 7 per cent. of these are above five acres in extent ; and there are practically no natural and scarcely any artificial boundaries to distinguish individual properties. Further, we have to reckon with the passions aroused in the rural classes by the great intrinsic value of the land, which Mr. Sheppard states is " probably nowhere higher in any country in the world." In view of all these difficulties, and many others which cannot be enumerated here, the Commission has recommended that any immediate and wholesale introduction of the Torrens system is impracticable. What is to be aimed at, for the present, is such modification of the existing organization as will, ultimately, render easy the establishment of a general system of guaranteed registration of title. In particular, the present method of recording transactions by names of individuals is to be abandoned in favour of one under which all records will be kept by property unit only. Such property unit is to be very strictly defined and measures (which are described at length) are to be taken to ensure that all rights inscribed against it are compatible both with those which have already been inscribed concerning it and with those inscribed against all other property units. The first set of precautions constitute what is called a *physical* scrutiny which will be entrusted to the Survey department—and the second a *legal* scrutiny, which will be undertaken by a Government department of official conveyancers. Finally, the Commission recommends that the reform be established in one province only, at the start—that of Menoufia—the remaining provinces being taken up in geometrical progression. It is hoped that, seven years after the commencement of this task, the system will be in operation throughout the country. It is the greatest boon which the Government could confer upon the fellaheen, and if the new regime in Egypt succeeds in effecting it within a reasonable space of time, that regime will have gone far to justify its claim to power.

NOTES ON IMPERIAL CONSTITUTIONAL LAW.

[*Contributed by* PROFESSOR BERRIEDALE KEITH, D.C.L.]

The Constitution of the Irish Free State.—There is curiously little innovation on established Dominion lines in the constitution for the Irish Free State which has emerged from the discussions in Dail Eireann. The brevity of the proceedings in the Dail was remarkable, but is explained by the absence of the Republican members of that body, which precluded any serious attempt to amend the terms of the constitution as introduced and supported by the Government. The withdrawal of Mr. de Valera's supporters facilitated the acceptance of the clauses which preserve the connexion of the Free State with the British Empire; an attempt by Mr. Gavan Duffy to have the oath of allegiance provided for in Article IV of the Treaty of Peace made optional for members of the Irish Parliament was decisively defeated as a clear breach of the spirit, if not of the wording, of the treaty. It is, however, important to note that the connexion of the Free State with the Empire was not asserted by the Administration to be necessarily permanent; Mr. Kevin O'Higgins, on whom rested the duty of piloting the Bill through the Dail, stated that, as the Treaty of Peace had been secured by pressure of force, it would be open in future for the Irish people to repudiate its obligations if the majority so desired. Though exception may be taken to the expression of such an opinion in the circumstances, it may fairly be argued that the view is consonant with reason; no bounds can be set by one generation to the possibility of national growth; the right of the Dominions to attain independence, should they unfortunately desire to do so, is recognized in theory,[1] and it would be idle to lay down any formal doctrine regarding the indissolubility of the tie between Great Britain and the Irish Free State. The grant of a most generous amount of autonomy to that State may in the course of time reconcile the majority of the people to the conception of the Imperial connexion as one of the highest value.

Judicial Appeals.—The Administration successfully secured the acceptance by the Dail of the provision under which an appeal by special leave will lie from the decisions of the Supreme Court of the Irish Free State, but from no other Court. This is, in effect, the system in force in South Africa, and is, therefore, much more generous than the provision would have been had the Canadian model been adopted as contemplated in the treaty. The appeal, the Administration represented, was mainly

[1] *Cf.* Keith, *War Government of the Dominions*, pp. 167–9.

intended to safeguard the interests of persons outside the Free State; but this assertion, of course, is misleading. The chief use of the provision is doubtless to secure to the Privy Council a voice in the interpretation of the Irish constitution, especially with a view to secure due observance of the provisions in favour of absence of discrimination on religious grounds. As the appeal by special leave will lie only from the Supreme Court, it has been necessary to secure that that Court shall always be entitled to hear appeals involving questions of the construction of the constitution; otherwise the purpose of the appeal might have been foiled by cutting off appeals to the Supreme Court in such cases, as was done in the Commonwealth of Australia when legislation was passed which precluded the Supreme Courts of the States from deciding constitutional issues affecting the relations of the States and the Commonwealth.[1] It does not appear from the constitution what the result of the appeal is to be, that is, whether the decision of the Privy Council will be binding as a rule of interpretation on the Supreme Court, or whether it will merely dispose of the individual case; the Australian High Court, it will be remembered, treated decisions of the Privy Council on constitutional issues on appeal from the State Courts as having no binding effect on the High Court. The fact that the constitution contemplates that Imperial legislation for the Free State shall be incompetent after the constitution is accepted cannot be overlooked in this regard.

Territorial Limits of Irish Legislation.—The problem of the limits within which the Acts of the Irish Parliament shall take effect is one which must be finally disposed of in the Imperial Act sanctioning the constitution. The most plausible mode of dealing with the issue appears to be to provide that the laws of the Free State shall, save where otherwise provided in any Act, be in force throughout the territory and the territorial waters of the State, and on all ships registered in the State, and may be extended by express enactment to Irish citizens when beyond the limits of the Free State or on ships not registered in the Free State.[2] Such a provision would probably secure the extent of legislative power adequate for the uses of the State. For many purposes, it is clear, legislation by Ireland would be undesirable; Irish citizens remain British subjects, and should still be subject to the legislation of the Imperial Parliament, which provides for the exercise of jurisdiction over such subjects in places where the Crown possesses extra-territorial jurisdiction.

Irish Citizenship.—The provisions regarding Irish citizenship are, in a sense, not altogether novel, since Canada has used the conception for purposes of immigration regulation, and has even gone so far as to define Canadian nationality to meet difficulties arising under the constitution of the Court of International Justice created under the terms

[1] See *Journ. Soc. Comp. Leg.*, vol. ix, pp. 260–80.

[2] This is the form suggested by me to the Drafting Committee at the chairman's request. Ships include airships.

of the Covenant of the League of Nations. But the Irish definition introduces a distinct novelty in making political rights depend on Irish citizenship, so that a natural-born British subject in Ireland will normally have no claim to the franchise. In the Dominions, of course, classes of British subjects have been excluded from the vote mainly on racial grounds, but it is a new departure that the European British subject should not normally be entitled to political rights, on the completion of the same term of residence in a constituency and fulfilment of the same conditions as regards age, etc., as a native of the Irish Free State.

Initiative and Referendum.—The provision of the existence of a limited referendum and of the possibility of the initiative is not surprising; the Labour Party, despite its belief that the referendum would be a conservative influence, was prepared to accept it, and there is obvious gain in securing close contact between the people and the Legislature in a State where, until lately, the people and the Government have largely been in conflict. An important proposal was made to substitute a referendum for Parliament in the article providing that, save in the case of actual invasion, the Free State shall not be committed to active participation in any war without the assent of Parliament. But the proposal was rejected, and the experience of Australia[1] in regard to the referenda on conscription in the late war does not favour placing the decision of such an issue in the hands of so clumsy an instrument as the referendum. The principle in itself is, in effect, in accord with Dominion practice; the Canadian Government, on receiving the British Prime Minister's appeal for support in his policy regarding the Straits, determined that it would be necessary, if any active steps were to be taken, first to obtain the approval of Parliament, which would have been summoned for that purpose, had the crisis continued to be acute. The contrast between the British and the Dominion action in this matter is instructive of the difference in the history of Britain and the Dominions.

Ministerial Responsibility.—Interesting is the desire shown by the framers of the constitution and the Dail to experiment with a derogation from the rule of the solidarity of the Cabinet and the necessity of all members of that body holding seats in the Legislature. The objections to the rigidity of cabinet government often felt in the Dominions have not resulted in any abandonment of its principles, and the very minor reform of having some ministers, who, while members of Parliament, will hold office independent of party, seems unlikely in Ireland to counteract the reasons which render cabinet solidarity more or less an essential part, like the party system, of the working of responsible government.

The Queensland Constitution.—The assent of the Crown to the reserved Bill of the Queensland Parliament to abolish the Legislative Council of the State terminates in its present form an acute controversy and brings prominently to the front the question of the need for bi-

[1] See Keith, *War Government of the Dominions*, pp. 88–96

cameral Legislatures in the States.[1] The difficulty came to a head in Queensland, because of the strength of Labour in that State, which secured a Labour majority in the Assembly in 1915, and renewed the mandate of Labour in 1918 and 1920, though in the latter instance by the small majority of four votes in a House of seventy-two members. The Legislative Council, a nominee body, without limit to the number of members who might be added by the Governor at any time, was at the outset in decided opposition to Labour, and in 1915 and 1916 the Assembly passed Bills providing for a referendum on the issue of the abolition of the Council, both of which naturally were rejected by that body. The Government then secured the putting in operation by the Governor of the Parliamentary Bills Referendum Act of 1908, a measure passed to provide a constitutional means of solving differences between the two Houses in preference to the crude device of creating fresh appointments, persistence in which would obviously ruin the utility of the upper chamber.[2] Exception was taken by the supporters of the Council to the adoption of this procedure, the power of the Parliament to abolish the Council by a Bill, especially one passed over the head of that body, being strenuously denied; but the High Court of the Commonwealth decided against this contention.[3] Leave to appeal from this decision was refused by the Judicial Committee,[4] but without deciding that point, on the ground that the referendum on the abolition of the Council had actually been taken, and had disposed of the issue by recording a majority of 62,909 votes against abolition. The Government did not allow itself to be deterred from further efforts by this result; the membership of the Council, which had fallen to thirty-seven in May 1917, was increased by thirteen new appointments on a strictly Labour basis in October. This action elicited a protest to the Governor on May 5, 1918, and no further appointments were made until the Governor left the State, and Mr. Lennon, formerly a Labour minister, as Lieutenant-Governor assumed the administration. He then adopted, in February 1920, the extreme measure of appointing fourteen fresh members, thus giving Labour a clear majority on the Council as regards effective voting power. This majority was used for the purpose of securing the passage of certain controversial measures outstanding, but it was not thought desirable to carry the measure for the abolition of the Council forthwith, and it was postponed until after an appeal to the electorate, which, however, gave only a majority of four to Labour. Notwithstanding this, the Bill to abolish the Council was introduced in the session of 1921 and passed easily through both Houses, the facility of passage being doubtless explicable by the fact that the former supporters of the Council felt it useless and unwise to maintain that attitude when

[1] See *Parliamentary Paper*, Cmd. 1625.

[2] See Keith, *Responsible Government in the Dominions*, vol. ii, p. 586; *Imperial Unity*, p. 400.

[3] *Taylor* v. *Attorney-General for Queensland*, (1917) 23 C.L.R. 457.

[4] 1918, S.R. Qd., 194.

the utility and character of the House had been undermined by the wholesale addition of partisan members, under pledge to vote in accordance with the Labour Party's policy. The Governor reserved the Bill, and various petitions for its being refused assent were forwarded by the Governor to the Secretary of State for the Colonies for submission to the King. The refusal of Mr. Churchill to give effect to these petitions was inevitable; it was impossible to allege any Imperial interest as involved; the swamping of the Council had satisfied many of its supporters that its utility had departed, and, even if there had been any doubt as to the validity of the measure in point of law—which was not the case—that was not a ground for withholding assent, since the issue was one properly to be decided by the Courts and not by the Secretary of State.

Difficulties of the Uni-cameral System.—While the history of this episode exposes the difficulty of a system in which the Upper House is nominee with no limit on the power of swamping, it is not by any means clear that the arguments of the Queensland Government against the existence of any second house are convincing. It must be remembered that, though in the majority of the Canadian provinces there is no second chamber, the judiciary there is outside the control of the provincial legislatures or governments,[1] a fact overlooked by the Queensland Premier in his arguments in favour of the uni-cameral system. Moreover, the Dominion Government in Canada exercises the power of disallowance of provincial Acts, and it has shown itself prepared on occasion to disallow such measures if really confiscatory,[2] while the Imperial Government has in effect negated any claim to deal similarly with Queensland Acts.[3] Further, the relaxation of Imperial control has been accompanied by the growing reduction of the Governor to the position of a constitutional sovereign, without initiative of any kind. Nothing indicates the change more clearly than the action of the Secretary of State for the Colonies, Lord Milner, in sanctioning the selection of Mr. Lennon, a pronounced Labour partisan, for the office of Lieutenant-Governor, involving his succession to the office of administrator of the Government in the Governor's absence. Such an appointment under the older doctrine would never have been conferred on a mere partisan, and the decision to allow the recommendation effect indicated that it was felt that the personal element had ceased to be of importance, and that the administrator of the Government was expected merely to act on ministerial advice.[4] In the absence of either external control or the right of the Governor to intervene, the safeguard against unfortunate action by Parliament lies, according to Mr. Theodore, in "the widest franchise, means for keeping the electoral districts proportionate according as population spreads, honest electoral laws, frequent elections and the responsibility of ministers to Parliament." There are, how-

[1] See 30 & 31 Vict., ss. 96–101.

[2] See Keith, *War Government of the Dominions*, pp. 299, 300.

[3] *Ibid.*, pp. 258–61.

[4] *Cf.* [1922] 1 A.C. 457, at p. 461.

ever, obvious difficulties in securing all these ends, and complaints of the mode of carrying out the electoral laws have not been unknown in Queensland itself. More serious is the power recently made use of by the Legislature under which proxy voting for members of Parliament absent from illness has been allowed, a device necessary to maintain the evanescent Labour majority owing to the ill-health of a supporter. The moral authority of a majority thus secured is not obviously very high. A further difficulty arises from the almost total absence of checks on the constituent powers of Parliament. The duration of its life can be changed by a simple Act, and a Government might therefore in theory at least prolong its existence against the popular will, subject to the dubious possibility of Imperial intervention. Such a contingency, as events in New South Wales during the war prove,[1] is not at all impossible, and the existence of the possibility must be set off against the contention[2] that no satisfactory second chamber is possible, since if elected on a restricted franchise it is undemocratic, and, if elected on the same franchise on the Lower House, it merely duplicates that body, while, if the term of membership is longer than that of the Lower House, it may lag behind the feeling of the electorate. The success of the experiment is evidently still in the balance.

Federal Control of Prices in Canada.—The Judicial Committee has again emphasized the restricted character of the powers of the Dominion Parliament under the provisions of s. 91 (2) and (27) of the British North America Act, 1867, to legislate for the regulation of trade and commerce and criminal law. As an aftermath of war conditions, authority was given by the Board of Commerce Act, 1919 (c. 37), to a new body constituted under that title to investigate cases where suspicion existed of undue increase of prices of commodities, the making of unfair profits and the raising of prices by hoarding, and the Combines and Fair Prices Act (c. 45) of the same year penalized with fine or imprisonment offences of undue accumulation and hoarding and required sale at reasonable prices of surplus stocks. The validity of this legislation was naturally called into question as running counter to the exclusive power of the provinces under s. 92 (13) of the British North America Act to regulate property and civil rights, and the refusal of the Judicial Committee to uphold the validity of the Canadian legislation was natural.[3] The war being over, and no famine existing, it was impossible to justify the legislation on any broad grounds, and only on some such cause would the Privy Council have found the legislation effective under sub-s. 2 of s. 91. Equally obvious was the impossibility of making the legislation valid as an enactment of criminal law; if the principle were conceded the whole position of the provinces could be undermined by Dominion legislation couched in the form of the imposition of penalties. The result, of course, is inconvenient, and is a reminder of the complications and hindrances

[1] Keith, *War Government of the Dominions*, p. 272.

[2] *Parliamentary Paper*, Cmd. 1625, p. 49.

[3] *In re Board of Commerce Act*, 1919, [1922] 1 A.C. 191; 60 Can. S.C.R. 456

introduced by the federal form of constitution, the importance of which is becoming steadily increased with the development of legislative activity on social and economic topics.

The Effect of Disallowance of Legislation.—Curiously enough there seems never to have arisen before the recent case of *Wilson* v. *Esquimalt and Nanaimo Railway Co.*[1] the precise question of the effect of the disallowance of a provincial Act in Canada on a grant of a title to property, made by the Executive Government under the authority of the Act during the period before disallowance. The effect of disallowance under the British North America Act, ss. 56 and 90, is to annul the measure from the day of the signification of disallowance, and *prima facie* this would seem to leave unaffected any action taken under the Act while it yet existed as such. But it might be contended that, as the grant of property was made under an Act which became null, the grant could not stand, since when the Act disappeared it rested *in vacuo*; the contention, however, would obviously have led to very unfortunate practical results as regards provincial, and therefore in theory even, Dominion legislation; nothing would have been regarded as secure pending the expiry of the period within which disallowance was possible, and the refusal of the Judicial Committee to accept the validity of the plea that disallowance annulled the grant is of general importance and value. There are, it must be added, possibilities of unsatisfactory results from the decision, for it may become a moot point how far disallowance will avail to undo the results of a confiscatory statute whose terms are carried into effect before disallowance becomes practicable, but such considerations cannot outweigh the balance of argument in the contrary sense.[2]

Provincial Succession Duties.—The case of *Burland* v. *The King* revives memories of the dissatisfaction of the Legislature of Quebec with the view taken by the Judicial Committee[3] as to the validity of the succession duty legislation of the Province. The powers of the provinces in this regard are affected both by the local limitation of provincial authority and by the restriction of their authority to tax to direct taxation, a point which the Judicial Committee held to have been overlooked in the earlier legislation of Quebec, while the Legislature contended that the Committee had misapprehended the point.[4] The latest decision establishes the validity of the amendments made in the Quebec law[5] as a result of the judgment of the Privy Council and makes it clear that a Province may levy duties on any transmission, within the Province, owing to the death of a person domiciled therein, of moveable property locally situate outside the Province at the time of such death, a result eminently consonant with equity. Transmission within the province is, of course, not easy to define completely; the

[1] [1922] 1 A.C. 202.
[2] [1922] 1 A.C. 215.
[3] *Cotton* v. *The King*, [1914] A.C. 176.
[4] Keith, *Imperial Unity*, pp. 375 ff.
[5] See 4 Geo. V. c. 10.

judgment suggests that it covers the case of any transmission of property to a person domiciled or ordinarily resident within the Province.

The Council and the Cabinet.—The important, if obvious, distinction between a decision of the Cabinet and the clothing of it in formal legal shape by an order of the Lieutenant-Governor in Council is illustrated by the judgment in *Mackay* v. *Attorney-General for British Columbia*.[1] The Public Works Act, 1911 (c. 189) of the Province as amended in 1914 gave authority to the Lieutenant-Governor in Council to acquire lands, and sanctioned the making of contracts in this regard by the Minister of Public Works under his seal. The issue raised was whether a contract formally made was valid in the absence of a formal order in council under the Act. There was no doubt that the Cabinet approved the steps taken, but it was equally clear that no order in council had ever been issued, and the Judicial Committee held without hesitation that it was impossible to dispense with such an order, citing in support of their general view *Churchward* v. *The Queen*,[2] and their own judgment in *Commercial Cable Co.* v. *Government of Newfoundland*.[3]

Provincial Control of the Liquor Traffic.—In *Rex* v. *Nat Bell Liquors, Ltd.*,[4] the Judicial Committee has decisively upheld the Albertan legislation prohibiting the sale of liquor in that Province, as contained in the Act of 1916 (c. 4), as amended in 1917 and 1918. The provincial Legislature, by the Liquor Export Act (8 Geo. V, c. 8), had made effective provision for the recognition of the Dominion rights of legislation, and thus prevented any successful attack on the provisions of the Liquor Act. It was also held, very naturally, that the confiscation of stocks of liquor unlawfully held was a perfectly legitimate penalty within the power of the provincial Legislature under s. 92 (15) of the British North America Act. The judgment is also valuable for an elaborate exposition of the nature of *certiorari*, and it establishes that the use of the term "criminal" in a Dominion Act (10 & 11 Geo. V, c. 32), denying the right of appeal to the Supreme Court in the case of proceedings for a writ of *certiorari* in respect of criminal charges, is to be taken in the wide sense of "not civil," and not in the technical sense of criminal law under s. 91 (29) of the British North America Act.

Direct Legislation.—The case, however, is really more important in the constitutional aspect from its treatment of the question of the legislative procedure provided for by the Direct Legislation Act (4 Geo. V, c. 3). The Liquor Act was passed in 1916 after the procedure provided for in that Act had been complied with; on a petition being presented, a referendum had been held on the terms of a Bill submitted to the electorate, and on the referendum declaring by the due majority for the measure, it had been duly enacted without substantial change by the Legislature. It was suggested that this mode of legislation ran counter to the constitution, since by s. 92 it is the Legislature which may exclu-

[1] [1922] 1 A.C. 459.
[2] [1865] L.R. 1 Q.B. 173.
[3] [1916] 2 A.C. 610.
[4] [1922] 2 A.C. 128.

sively make laws, and the procedure laid down in effect deprives the Legislature of any true part in legislation. The Judicial Committee had not, of course, to decide the question of the validity of the Direct Legislation Act, and it was content to assert that there was nothing to show that the Liquor Act was not duly enacted by the Legislature. The Legislature was intended to carry out the wishes of the electors; it would be absurd that it should only pass acts against these wishes or on topics on which the electors had no interest. At a general election the electors returned members under a mandate to enact a series of measures, and there was no essential difference in the electors declaring that they desired a certain measure to be passed. This view suggests that the Court would look with favour on the Direct Legislation Act if its validity were directly challenged, and indicates a change of view in comparison with the treatment meted out to the Initiative and Referendum Act, 1916, of Manitoba.[1] Yet the reasoning of the Judicial Committee seems to overlook one vital point: the procedure under the Act deprives the Legislature of any deliberative function whatever, and turns it into a mere machine for registering the decrees of the people. It deprives the Legislature of the whole business of shaping a law, since it is not permitted to make any substantial change, and it deprives the people of the profit to be derived from the intelligent discussion of the proposed measure by the Legislature. There is nothing in the judgment to show that this aspect of the case was present to the Court, and it is, of course, wholly contrary to British political views to treat a member of the Legislature as sent there simply to carry out the instructions of his constituents.

South African Appeals.—It is decidedly difficult to understand on what principle the Judicial Committee was troubled with the appeal of the *Madrassa Anjuman Islamia* v. *Municipal Corporation of Johannesburg*,[2] for no constitutional issue of any kind was involved, the whole point turning on the meaning of the word "occupy," in circumstances where the sense could hardly be disputed. Such public interest as the case had was merely as a side issue of the attempts made in South Africa by British Indians to evade the operation of the harsh anti-Asiatic legislation of the Transvaal by the creation of companies, which, though Asiatic in membership and management, cannot themselves be deemed Asiatic. The Vrededorp Stands Act, No. 27 of 1907, forbade owners of stands in that township to allow any Asiatic to occupy the land, save as the *bona fide* servant of a white person resident there; it was sought to evade the operation of this exclusion by creating a company and insisting that its officials were not in occupation, the only occupier being the company, which was not an Asiatic—a contention which failed decisively, both in the Court below[3] and in the Judicial Committee.

[1] *In re Initiative and Referendum Act*, [1919] A.C. 935. *Cf.* this *Journal*, vol. ii, pp. 112–15.

[2] [1922] 1 A.C. 500.

[3] S.A.L.R., 1919, A.D., 439; see also 1917, A.D. 718.

INTERNATIONAL LABOUR LEGISLATION.
NOTES AND REVIEWS.

[*Contributed by* SIR LYNDEN MACASSEY, K.B.E., K.C.]

Progress and Problems.—The annual report of M. Albert Thomas, Director of the International Labour Office, to the International Labour Conference (League of Nations) now in session in Geneva, gives an exhaustive survey of the work achieved by the organization in promoting universal social reform by the two-fold method laid down in the Peace Treaty—first, the securing of international agreements for translation into national legislation, and secondly, the collection and world-wide dissemination of information on labour conditions and movements. The report contains also an examination of some of the difficulties and problems which have been encountered in the effort to level up conditions of labour in backward countries, and to establish a world minimum standard of humane conditions for workers in factories, on the sea, and on the land.

Not the least interesting part of a very substantial volume—the Report occupies over 300 pages, and is in French and English—is a series of tables showing the steps taken in the various countries to ratify or give effect to the Draft Conventions and Recommendations dealing with hours of work, employment of women, child labour, etc., adopted by the three Conferences held respectively at Washington (1919), Genoa (1920), and Geneva (1921). According to these tables, 51 formal ratifications of these Conventions have been registered (since the Report was prepared, this number has been raised by Japan to 53), 16 have been authorized by Parliaments, and 85 have been recommended to Parliaments. For the application of the Conventions and Recommendations, 172 legislative measures have been adopted by Parliaments, or are in progress.

While the Report does not suggest that these results are all that might have been hoped for, and while it deals frankly with the obstacles to more immediate and extensive progress, it closes on a not unhopeful note. Success in the task set before the International Labour Organization, says M. Thomas, will obviously depend on a variety of considerations.

"It will depend on the solidarity and the capabilities of the workers' organizations; on the valuable assistance forthcoming from employers fully alive to the importance of the service which may be rendered to industry by a sane legislation; and on the Governments' will to social progress. Success will also depend on the active vigilance, the tact and the prudence of the International Labour Office itself, and on the authority which it

succeeds in acquiring in the eyes of Governments, the confidence which it inspires in them and the security which it affords them. But it will depend above all on the faith which must be maintained unextinguished in the hearth (sic) of all—faith in those ' fair and humane ' principles which, in a never-to-be-forgotten hour, men of all classes and of all countries inserted, through their negotiators, in the texts of the Treaties of Peace. Success will depend on men's faith in justice."

International Labour Laws of 1920.[1]—There has just been published, by the International Labour Office of the League of Nations at Geneva, a volume entitled *Legislative Series*, vol. i, 1920, which contains in English a copy of all the laws, decrees, administrative orders, instructions, and other rules and regulations passed or made during 1920 and affecting, either directly or indirectly, labour in industry in countries, parties to the League of Nations. A similar volume is published in French, the other official language of the International Labour Organization. Each of the laws, decrees, etc., in the volume has been published separately some time ago, but has now been conveniently included in the volume for the year. It represents a monumental undertaking; the work of translation alone, which is most carefully and accurately done, is prodigious. In one book, opportunity is given to review, in a comparative form, practically the whole of the legislation affecting labour throughout the world. There is an admirable chronological index of the laws, decrees, etc., for each country; in addition there is an exhaustive subject index to the whole of their contents, so that under any subject, as, for example, " Accidents in Works," one is provided with a ready reference to the legislative and administrative provisions in respect of that subject in all the different countries. If a criticism might be offered, it would be that future volumes should be consecutively paged; it is inconvenient to have to look up the country alphabetically in order to find a particular statute among its numbered laws. As the volume is an assemblage of separate laws previously published, at different dates, they could not obviously, when first printed, be paged as for the finished volume. Still, there are several expedients for getting over that difficulty. But that is a minor matter; in its essentials, the volume reflects the highest credit upon the International Labour Office, and especially upon Miss Sophy Sanger, who, as Secretary to the British Section of the International Association for Labour Legislation, did such good work before the war at Berne, and is now continuing and expanding it under the wider sphere of the International Labour Office.

Industrial Conciliation and Arbitration.[2]—Mr. Gilchrist, acting Controller of the Labour Bureau of the Government of India, has

[1] *Legislative Series*, vol. i, 1920.

[2] *Conciliation and Arbitration*, by R. N. Gilchrist, M.A., Indian Educational Service, acting Controller, Labour Bureau, Government of India; *Bulletins of Indian Industries and Labour* No. 23; Government Printing Office, Calcutta, pp. 238. Rs. 1.12

written an eminently serviceable book on Conciliation and Arbitration in Industry. It presents concisely, and in a form of great value to the comparative lawyer, a survey of the methods, both those attempted and those in use in Great Britain, Australia, New Zealand, Canada and South Africa, the United States and the Continent of Europe, for dealing with industrial disputes. The author, wisely recognizing that it is impossible to analyse the whole field of modern legislation on this subject, has tried, and, with commendable results, succeeded in setting out the fundamental principles of legislation affecting the matter in the different countries, with full reference to the relevant Acts, and to the legal decisions, industrial movements, and other causes, which have led to the passing of those Acts. What is very valuable, he gives considerable information as to the varying circumstances in different countries, and of their effect in moulding the particular system of conciliation and arbitration instituted by law in each country, and in addition the factors which have affected the practical working out of the system. There have been many attempts in the past to deal with the important matter of conciliation and arbitration in industry, but most of the books descriptive of the systems in vogue in different countries are of little use to the student; they have been written with a bias which is obvious, or, if less apparent, one which, on inquiry, proves to have been responsible for a selective arrangement, perhaps involuntary, of facts which tended to support some preconceived theory of the author. There is no trace of anything of that sort in Mr. Gilchrist's most careful book. He has set out the material legislative provisions and analysed them, he has collated the salient facts and summarized them in an impartial and critical manner which cannot fail to impress the reader. So far as there has been opportunity to test the facts, and the writer of this notice has been able to do that from his own experience in a number of important instances, they are presented with accuracy and in balanced perspective.

From the outset Mr. Gilchrist recognizes one circumstance that inevitably impresses itself upon the mind of any jurist inquiring into the administrative efficacy of industrial conciliation and arbitration—the methods of one country, however admirable at home, are seldom applicable in their entirety to the circumstances of another country. National temperament, racial genius, economic circumstances, topographical peculiarities, all have their effect. Even within the British Empire itself there are variant conceptions and marked divergences of law. Great Britain has up to the present—except during the war, when the attempt was a failure—set its face against every type of compulsory industrial arbitration under statute. "Australasia, on the other hand, has tried to reconcile all methods with a central theory of compulsion. The Canadian system, the popularity of which is rapidly growing," Mr. Gilchrist says, "represents a compromise between voluntary and compulsory methods. Among these methods, purely voluntary,

semi-compulsory, and compulsory, there are many shades and grades. Each system has its advocates, and each system has its opponents. On the methods of industrial peace there is no agreement; on the necessity of industrial peace (except for a few dreamers and anti-social agitators) there is complete agreement."

Australia was formerly used, especially South Australia, as a strong argument in favour of compulsory arbitration, but it no longer serves that purpose. Compulsory arbitration in Australia worked harmoniously so long as the great development of the country absorbed all available labour, and so long as the procedure resulted generally in the workers obtaining, if not all their demands, at any rate a substantial portion. Now, however, that the conditions of Australia, as a result of its greater development, and especially because of the abnormal economic circumstances created by the war, are approximating more closely to those of Great Britain, the compulsory arbitration system is very seriously disorganized and discredited. In fact, in South Australia there appears to be a definite attempt to abolish it which seems to have received considerable support from the Government. A careful perusal of Mr. Gilchrist's most interesting work shows conclusively, although that is no part of his thesis, that compulsory arbitration is incompatible with the idea of freedom so strongly imprinted in the Anglo-Saxon temperament.

It is often overlooked by those who advocate legislation imposing compulsory arbitration, that if a right is to exist to compel workers to work for a rate of wages or under conditions of employment prescribed by an arbitration tribunal, the same right must exist to compel employers, on the other hand, as a necessary corollary, to run their works at a loss, which of course is an impracticable condition of affairs. The position is neatly summed up by Mr. Gilchrist when he says: "Compulsion is possible only where it is desired by the common consciousness."

To those who desire to tread under capable, critical and impartial direction through the mazes of legislation which in different countries has been passed in regard to conciliation and arbitration, this work of Mr. Gilchrist can be recommended with confidence. It is not without significance that the very extensive inquiry upon which it is based was inaugurated by the Government of India, and evidences the anxiety of that Government to deal with its own growing industrial problem on lines that have been explored by experience, subject of course to such adjustments—and they will be many—as are necessary to give effect to Indian conditions.

Labour Legislation in Great Britain, France and the Scandinavian Countries, 1900–1922.[1]—The work of the Annual International Labour Conference of the League of Nations in formulating conventions and principles of legislation on labour questions for adoption by countries

[1] *British and Continental Labour Policy*, by B. G. de Montgomery. (London: George Routledge & Sons, Ltd., 1922. Pp. xxviii + 575. 21s.)

parties to the League, as well as the fact that the Permanent Court of International Justice has already given its first decision on a labour matter, has brought into prominence, especially on the Continent of Europe, the urgent necessity for some textbook, or rather a series of textbooks, which deal comparatively with labour legislation in the different countries which are represented on the Conference. Mr. Bo-Gabriel de Montgomery, a distinguished French publicist, has led the way and has produced a book quite invaluable to all interested, or professionally concerned, in international labour laws.

In this book, entitled *British and Continental Labour Policy*, he has exhaustively examined the political labour movements and the provisions of labour legislation in Great Britain, France and the three Scandinavian countries of Sweden, Norway and Denmark. The conjunction of the two subjects is sound—indeed, it is essential; without some knowledge of the political labour movements of a country it is impossible to appreciate, in proper perspective, the country's code of labour legislation. The combination of constitutional and legal history with explanation and interpretation of the laws, adopted in the book, is most helpful. A mere interpretation of a statute without any information as to the circumstances under which it was passed, gives little clue to national tendencies, and throws no light on the true inwardness of a national code. It is to be hoped that either Mr. Montgomery or other authors equally informed and expert, may in time deal with other countries on the same basis.

It is mainly from the point of view of international law that this book will appeal most strongly to jurists: "To learn what the laws of a country are is not the work of a day even in pacific times, and of persons accustomed to legal inquiries," as Lord Stowell said in *Ruding* v. *Smith*. With some knowledge of the difficulties of the task it is permissible to congratulate Mr. Montgomery on having performed a difficult undertaking with conspicuous success. His book summarizes in comparative form the acts and orders and decrees that deal with the live industrial issues of the present time in the countries which he brings under review. He shows that he possesses a clear insight into fundamentals and is gifted with a faculty of getting away from words down to things essential; and he sets out clearly, with full reference to authorities and copious documentation, the general basic principles which underlie the various national enactments. In the scope of this short notice it is impossible to do adequate justice to this admirable book. Of its 529 pages about one-half deals with the political labour movements, and the other half with labour legislation. In the former section the writer gives a most interesting account of the emancipation of the trade unions from repressive legislation in Great Britain, France and the Scandinavian countries, and of their legal capacity in regard to parliamentary action. The author's criticisms on the Taff Vale decision and the Osborne case are fresh and penetrating. A wealth of material

lies at the disposal of the comparative constitutional lawyer in this part of the book.

The chapters which deal with the legal position of trade unions in regard to trade disputes and with the validity of collective agreements are well done. It is possible only to epitomize the author's conclusions. In Great Britain "no action of tort can be brought against a trade-union, but its trustees can be sued in respect of tortious acts committed by or on behalf of the union, otherwise than in furtherance or contemplation of a trade dispute. Trustees so sued are entitled to be indemnified out of the funds of the union." In French and Scandinavian law, on the other hand, a trade union has full civil responsibility for acts committed by or on behalf of the union, no exception being made for acts committed in furtherance or contemplation of trade disputes. There are further striking differences under British, Swedish and Norwegian law, no action against a trade union in respect of any act which is committed by any member of the union, but not upon the authority of its committee, can be entertained by any Court, whereas under French and Danish law, a trade union is legally responsible for acts committed by its members which constitute a breach of a collective agreement, even although such acts are not committed on the authority of the trade union committee.

The question of collective agreements is becoming daily of more importance for preserving industrial peace. By that is meant an agreement between an employers' organization, representing a large number of employers, and a trade union, representing a large number of workers, to observe prescribed conditions of employment and, it may be, conform to some specified procedure for avoidance of disputes. In Great Britain all such collective agreements are based entirely upon the good-will of the contracting parties, and cannot be enforced by law. On the other hand, in French and Scandinavian law, collective agreements are legally binding contracts, and damages may be awarded for non-fulfilment of their terms. In fact, in Denmark, if a collective agreement, in force between an association of employers and a trade union, is violated by one or several members of the association or by a group of trade union members, the aggrieved party can bring legal action against the party to which the offender belongs. These are strange notions to a lawyer steeped in the English doctrine of privity of contract. But collective agreements are becoming more and more a necessary condition of stable industry.

Mr. Montgomery sums up his own personal view as follows:

"It is clear that the legal position of British trade unions is in sharp contrast to that of trade unions under French and Scandinavian—particularly Danish—law. While the British trade unions, under certain conditions are placed above the law so that they cannot be made responsible for their own acts, the French and Danish trade unions, as we have seen, are responsible not only for their own acts, but also, in certain cases, for acts committed

by their members, even if the latter are not acting upon the authority of their union.

"Which type of legislation is preferable, as more likely to lead to the establishment of industrial peace, is a question which depends largely upon the character of the working-class, and of the industrial conditions in each country. Considering, however, that industrial peace ultimately depends upon the existence of friendly relations between the employers and their workmen, it seems as if the British system, based entirely upon good faith, must be regarded as superior to the French and Scandinavian systems, based upon legal force."

There are many more interesting differences between the industrial laws in France and the Scandinavian countries, especially those which deal with minimum wages, the regulation of hours of labour, unemployment, and joint industrial organizations, but for these readers must be referred to the book itself. There is no doubt that Mr. Montgomery has written a notable book of live interest and of permanent value to the comparative lawyer, particularly to those concerned in international labour legislation.

NOTES.

The Late Maître Edouard Clunet.—When writing for *The Times* of September 6 a report on the recent meeting of the Institut du Droit International at Grenoble, I referred to Edouard Clunet as " the doyen of international lawyers, the oldest advocate of the Paris Bar, who still charms us by his speeches." Clunet, though he took little part in the discussions at Grenoble, was in conversation as interesting as ever. Constant in work as he was to the end, he spoke to me of his approaching journey to Prague to take part in the International Air Conference. And now he has died on his road thither at Strasbourg.

I had known him so long and had such an esteem for him that I am grateful to the Editors for being allowed to contribute a personal appreciation in supplement to the biographies by the pens of M. Louis Renault and Sir T. E. Holland, which appeared in this *Journal* in 1916.

My first acquaintance with him was in 1880, when he came to England sent as delegate by the French Government to some conference, I think on Prison Reform, and with a letter of introduction to my father, which led to his being invited to our country place. Since then I have met him often, at International Conferences, and on the occasions of his visits to England.

Twice, at least, I remember his being called as an expert on French law in our English Courts, when I had the honour of cross-examining him. Once was on the French law as to the defence of compulsory pilotage, once as to the national quality or domicil of a testator born on the border lands ceded and retroceded between Belgium and France.

I have been under the charm of his oratory time after time. Two or three occasions I specially recollect.

In 1902 we were at a Conference of the Comité Maritime Internationa at Hamburg, and I remember a speech of his on some rather dry question of shipping law rendered so delightful from lucidity of expression and music of voice, that I was sorry when it came to an end.

The next day a small party of us were invited to *déjeuner* by my late most respected friend, Dr. Sieveking, President of the Court of Appeal at Hamburg. Towards the close of the repast Clunet rose unbidden, and did what no Englishman could have done, for *mauvaise honte* would have prevented us, delivered a most charming address to Madame Sieveking on the excellent way in which her husband had presided over our meetings, and her sons had acted as secretaries.

I remember him as President of a Conference of the Internationa Law Association at Paris in 1912, when he and M. Labori vied with each other in affording us a delightful reception, and in the year following, at Madrid, when, as outgoing President, he proposed the toast of his Spanish successor, Don Garcia Prieto, Marquis of Alhucemas; just as, two years before, he had as President of the Institut responded to the inaugural address of the same distinguished Spaniard; and I remember him at the meeting again of the International Law Association Conference at the Hague in 1921, when, both at the opening session, and at the principal feast, his speeches were, as they so often were, such as to make one long for more.

He is particularly associated in my mind with the late Lord Alverstone, with whom he was on most friendly terms.

He suffered, as so many fathers have done, in the Great War. His son, an able and very valiant surgeon, who had already, to use a French expression, *fait ses preuves* in Algeria, succumbed to his labours in hospital. I do not think that he or Madame Clunet, with whom we must now doubly sympathize, recovered from that shock.

Readers of this notice will observe that it only professes to be supplementary and to deal with his personal qualities. For his eminence both as a national and an international lawyer, and for the value of his contributions to jurisprudence, especially his permanent memorial in the *Journal du Droit International Privé*, I would rather refer my readers to the articles published in 1916.

But I may be allowed to bring the record in these articles up to date. He never ceased from his work on international law, and throughout the Great War and since he was constantly furnishing articles full of pith and substance to his own journal, now rightly called the *Journal de Clunet*, and to the French newspaper, *Le Temps*.

He is the only man who has been President of the Institut and of the International Law Association, the twin societies which were founded after the Franco-German War in 1873, to promote the study and reform of International Law, and the prospects of peace by the substitution of law and justice for force and the sword.

PHILLIMORE.

Annuaire International de Législation Agricole, X^ème^ Année, 1920. Roma, 1921.—The *Annuaire* for 1920 appears in its usual form. The Introduction offers a condensed summary of the contents, which are grouped under convenient headings. The various indices assist a study of the total legislation of each particular country or a comparison of the different methods by which various countries have met the same problems.

Taken as a whole, the agrarian legislation of 1920 offers a striking commentary on the difficulty of the agricultural questions which the war and the political changes that were its consequences have raised

in Europe. In one respect improvement is suggested. Less space is devoted to measures for securing supplies of foodstuffs to the various populations. Either the legislation of the two previous years was working effectively, or the need was less urgent, or both causes were working concurrently. In some countries there were relaxations of the laws. In others, the bread situation was still critical. It was so in France. The law of August 1920 brings producers of corn, millers, bakers, and traders under the control of the State by a series of minute regulations. It may come as a surprise to many that the situation in Denmark was also serious. The wheat and rye harvests of 1920 were requisitioned. Every producer was compelled to deposit the whole of his crop in Government stores, with the exception of seed corn and damaged corn. It was taken over by the State at fixed prices, and only when the bread-supply of the people was secured was sale at home or abroad permitted.

The rise in prices of all necessaries was general, and a legislative campaign against profiteering was almost universal. Nowhere was the campaign more vigorous than in the Union of South Africa. A law of August 1920 endeavours to prevent excessive profits on goods of primary necessity, and to control the operations of trusts, combines and agreements, which aim at forming monopolies or restricting liberty of trade. With this object the Governor-General is empowered to set up a controlling council to limit profits and compel the sale of goods at just prices. If necessary, the Governor-General is also able to appoint local committees armed with similar powers. In Italy an analogous procedure was adopted. The Prefect was charged in each province with the duty of setting up in the capital of his province an arbitration tribunal empowered to deal with all questions relating to the sale and distribution of foodstuffs.

Another group of laws which occupies a large space, especially among newly formed countries, are those dealing with the break-up of large properties, the redistribution of land and the formation of small holdings. From this point of view the legislation of Poland, Lettonia, or Czecho-Slovakia, is interesting. The treatment of expropriated persons in these infant States is in striking contrast with their fate in a less disorganized country like Greece.

Numerous other points might be selected. It is perhaps enough to say that almost everyone of the agricultural problems of Great Britain, except that of falling prices is illustrated in the *Annuary of Agrarian Legislation of* 1920.

ERNLE.

Chile.—A schooner was run down by a steamer called the *California* belonging to the Pacific Steam Navigation Company on June 26, 1917, in extra-territorial waters. The Supreme Court held on appeal that the fact that the defendants had a commercial domicil in Valparaiso was sufficient to give the Chilean Courts jurisdiction to try such a case of *quasi-delict*. (*Revista de Derecho*, vol. xvii, p. 520.)

WYNDHAM A. BEWES.

The British Guiana Ordinance.—In a little book [1] by a learned Judge of the Supreme Court of British Guiana is supplied a serviceable guide to the Civil Law of British Guiana Ordinance, 1916, which came into force on January 1, 1917. It contains, besides the text of the Ordinance (as amended up to date), the several English statutes which have been incorporated with, or adapted to, the Ordinance, together with some useful notes and comments. The nature and purpose of the Ordinance, as well as the events that led up to its enactment, have been dealt with in an earlier issue of this *Journal* (New Series, no. xxxix, p. 210 *et seq.*). The publication of the present work seems an appropriate occasion for a few supplementary remarks on the subject.

Writing on August 15th, 1921 (*i.e.* some three and a half years after the coming into force of the Ordinance) the learned author, in his preface, says: "Perplexities and difficulties have arisen, and doubtless will in future arise, both in the interpretation of the Ordinance itself, and as a result of the change in the Common Law. Some few," he adds, "have been dealt with by statutory amendments. Others still remain." For reasons which sufficiently appear from the Article above cited there is no occasion for surprise at this statement. An enactment so comprehensive and drastic, and comprising so many heterogeneous provisions as this Ordinance, was bound to leave many openings for doubts and difficulties. These difficulties are, as the learned author intimates, partly matters of construction, and partly matters incidental to the practical working of the Ordinance. Of the former kind are the difficulties occasioned by the extreme generality of the terms in which some of the Sections are couched. The author accordingly, in commenting on the Sub-section saving existing rights (Section 2, Sub-section 3) observes, with good reason, that it is "not easy of elucidation, so general, on first reading" (and, indeed, on second reading too) "do its terms appear," and he invokes the aid of the *ejusdem generis* doctrine in order to find some practicable limitation for the sweeping words "or of any other right." The same observation might be made with regard to other provisions of the Ordinance, *e.g.* Section 2, Sub-section 2; Section 3, Sub-section 1, and others. The majority of the difficulties, however, are not ordinary matters of construction, but are questions incidental to the carrying out of the most important provision of the Ordinance (Section 3, Sub-section 2), which substitutes the English Common Law (with certain exceptions) for the old Roman-Dutch Common Law. A great many such questions are carefully discussed in the present volume.[2] Here it will suffice to advert briefly to two of them as examples. On p. 34 *et seq.* the point is con-

[1] *The Civil Law of British Guiana*, by Ll. C. Dalton, M.A., Cantab., of Gray's Inn, Barrister-at-law, Advocate of the Supreme Court, South Africa, Puisne Judge, British Guiana, 1921.

[2] It is interesting to note that the learned author, when discussing points of Roman-Dutch law, frequently calls in aid the decisions of the South African and Ceylon Courts, thus testifying to the essential unity of the Roman-Dutch system (or what is left of it) in three widely separated parts of the Empire.

sidered whether the principle of acknowledgment of a debt (whereby the latter is taken out of the Statute of Limitations) is part and parcel of the Common Law of the Colony. If the principle is part of the existing Common Law of England, the answer is yes; if it, however, rests on English Statute Law, the answer is, without more, no. The British Guiana Court would therefore in such a case be called upon to give a decision as to the contents of the English Common Law. (The learned author comes to the conclusion that the question should be answered in the affirmative.)

On page 131 the author in commenting on one of the English statutes "adapted" by the Ordinance (Lunacy Act 1890) calls attention to a difficulty which attaches to the incorporation or adaptation of any English Statute. "It must be noted," he says, "that the introduction of the English statute law into British Guiana has, by this section (i.e. Section 20) of the Ordinance, been partial. In applying the section therefore care must be taken first of all definitely to ascertain, in any particular case that may arise, how far that introduction has proceeded. It is highly probable that questions may arise both in the case of this statute and the other English statutes which have been adapted and incorporated by this Civil Law Ordinance, as to the extent of the adaptation or incorporation, and in many cases it is obvious that the questions will not be easy to answer, without very careful consideration of the section of the Ordinance providing for such adaptation or incorporation." This is a useful note of warning.

The above are specimens of the "perplexities and difficulties" mentioned by the author in his preface. They will, when they arise, have to be dealt with, like any other legal perplexities, in the light of practical experience and with patience. In the meanwhile books like the one before us will supply a valuable help towards the removal of doubts.

J. C L.

Maintenance.—The Maintenance Orders (Facilities for Enforcement) Act, 1920, provides for the enforcement in England and Ireland of maintenance orders made by Courts in any part of His Majesty's Dominions outside the United Kingdom to which the Act extends. The Legislatures of the undermentioned State, Colonies, and Protectorates, having made reciprocal provision for the enforcement therein of maintenance orders made by Courts in England and Ireland, an Order in Council was issued on March 2, 1922, extending the Act to Queensland, the Falkland Islands, Basutoland, Bechuanaland Protectorate, Northern Rhodesia, Swaziland, and Zanzibar Protectorate. Further Orders in Council were issued on May 19, 1922, extending the Act to Tasmania and Western Australia; on June 28, 1922, to the Dominion of New Zealand, Bermuda and the Gilbert and Ellice Islands, and on October 27, 1922, to Fiji, Seychelles and British Solomon Islands Protectorate.

Administration of Justice Act, 1920.—Part II of this Act provides for the enforcement in England, Scotland and Ireland of judgments obtained in any part of His Majesty's Dominions outside the United Kingdom or in any territories under His Majesty's protection to which the Act extends. The Legislatures of the under-mentioned territories, having made reciprocal provision for the enforcement therein of judgments obtained in the High Court in England, the Court of Session in Scotland, and the High Court in Ireland, Orders in Council were issued on March 2, 1922, extending Part II of the Act to the following State and Colonies: Western Australia, Ceylon, Grenada, and Trinidad and Tobago. Further Orders in Council were issued to the following Colonies and Protectorates: on March 29, 1922, the Straits Settlements and the Colony and Protectorate of Nigeria, and to the Tanganyika Territory, in respect of which a mandate is being exercised by His Majesty's Government; on April 10, 1922, Hong Kong, Basutoland, Bechuanaland Protectorate, Swaziland and Weihaiwei; on June 1, 1922, British Guiana, St. Lucia, Seychelles, and the Gold Coast Colony; on June 28, 1922, Northern Rhodesia and the Uganda Protectorate; on July 22, 1922, the Leeward Islands, the Gilbert and Ellice Islands, the British Solomon Islands Protectorate, and the Nyasaland Protectorate; on October 22, 1922, British Honduras and Barbados.

Canadian Bar Association.—The *Proceedings of the Sixth Annual Meeting of the Canadian Bar Association* (Toronto, The Carswell Company, Limited), tells of the doings and discussions of the Association in September 1921. Interesting as are many of the speeches, papers and reports included in the volume—Legal Ethics, Legal Education and Law Reporting were all dealt with—English readers will probably turn at once to the addresses of the representatives of the English Bar. Sir John Simon, as was to be expected, delivered a thoughtful speech, choosing for his subject, "The Vocation of an Advocate." He was able to entertain his audience with many stories of bygone heroes of the law; and all will appreciate the passage in which he dwelt upon the importance of repeating an argument in a Court of Appeal at least three times—once, so that one of the judges may follow it; a second time to enable the judge to explain the point to his brethren; and a third time, to correct the erroneous impression which the judge has conveyed. And there is a great deal to be said in the view put forward by Sir John that Portia, in reserving her best point till the end of her address, showed herself indeed an amateur.

Sir Malcolm Macnaghten had the pleasure of hearing from Canadian speakers much praise of the late Lord Macnaghten. He singled out, as calling for imitation in England, three peculiarities of the Canadian legal system—the periodical revision of statutes, the "examination for discovery," and the reasoned formal judgment. Those who are doubtful as to the continued stability of the Judicial Committee of the Privy Council will find in the proceedings nothing to justify their fears.

Mixed Arbitral Tribunals.—Parts 9, 10, 11 of the *Recueil des Décisions des Tribunaux Arbitraux Mixtes*[1] report many further cases decided under the peace treaties in different countries, the majority of them arising under Article 297 (*e*) of the Treaty of Versailles. Five of these cases seem to claim special attention by reason of their importance. In two of them, *Macleod Russell & Co.* v. *Germany* (p. 547) and *The Owners of s.s. Seaham Harbour* v. *Germany* (p. 550), both decisions of the Anglo-German Tribunal, the question was raised whether compensation for private property requisitioned in Germany ought to be claimed under the Reparation Sections of the Treaty of Versailles or whether the Mixed Arbitral Tribunal had jurisdiction under the Private Property Clauses. The Tribunal decided that it had jurisdiction. In the third case, *William Brandt's Sons & Co.* v. *Ludwig Tillmann* (p. 554), also a decision of the Anglo-German Tribunal, it was held that a British secured creditor is entitled to payment through the German Clearing Office of the full amount of his debt without regard to the value of the security, and that the security is caught by Article 297 (*b*). In the Franco-German case of *Georges Maridort* v. *L. Behrens* (p. 581) it was decided that where a contract was abrogated at the outbreak of war and property belonging to one of the parties remained in the hands of the other, the duties of the latter with regard to the property are to be determined by the rules governing the quasi-contractual relationship of "gestion d'affaires." In the Anglo-German case of *Chamberlain and Hookham, Ltd.* v. *Solar Zahlerwerke G.m.b.h.* (p. 723) it was held that, whatever might have been decided as to the nationality of a company incorporated outside Germany but controlled by Germans, a company incorporated in Germany under German law and having its registered office in Germany was a German national for the purposes of Article 296, even if all its shares were held by British subjects.

The American Journal of International Law.—The principal articles in the first issue of the *Journal* for 1922 deal with American policy and problems in the Far East. Tyler writes of American "Good Offices" in Asia, George A. Finch of American diplomacy and the financing of China, and B. H. Williams of the Protection of American citizens in China. The editorial comment is noteworthy for a review by David Jayne Hill of the proceedings of the second Assembly of the League of Nations. This distinguished member of the Board of Editors there gained the impression that the necessity of radical changes in the Covenant was generally accepted, that the recommendation of the Assembly with regard to the reduction of armaments was felt to offer only a faint hope of results and that the Assembly had no serious control over mandates. He concludes his description of the meeting by a criticism: the Assembly, he feels, "does not venture boldly to lay hold upon the most vital realities of the European situation. It is not fully representative of Europe; and, bound by its Covenant, which

[1] Librairie de la Société du Recueil. Paris: Sirey, 1922

is an article in a treaty of peace imposed by war, it cannot be. . . . Quite evidently, the League is gradually seceding from the obligations of its Covenant. To become a real association for peace, it must transform itself fundamentally. And this, in my belief, it will continue to do." This issue of *The American Journal* also reports further awards of the British and American Claims Arbitration Tribunal, and the Supplement of Documents contains the peace treaties between the United States and Germany, Austria and Hungary.

NOTICES OF BOOKS.

WORKS ON INTERNATIONAL LAW.
WAR AND NEUTRALITY.

WHEN Professor Oppenheim's death came in October 1919 the work of preparing a third edition of his treatise,[1] upon which he had been occupied for some time, was still unfinished. Happily, the publishers found in his faithful pupil, Mr. Roxburgh, formerly a Whewell scholar in the University of Cambridge, a thoroughly qualified editor to complete the unfinished task. The first volume as revised by Mr. Roxburgh was published in 1920, and the second volume has now made its appearance. With him the undertaking has been a genuine labour of love, and he has performed the task with the conscientiousness of one upon whom has fallen the duty of executing the trust of a devoted friend. The task has not been without difficulty. Professor Oppenheim himself had left many notes, but they were not always complete, and it is not improbable that had he lived he would have altered some of his conclusions in the light of subsequent events and more mature reflection. Upon a goodly number of questions he left no memoranda at all, or only fragmentary notes which were doubtless intended to be the basis of more complete observations. Upon the editor devolved the somewhat difficult task of weaving into the body of the text the author's own materials, of endeavouring to say for him what he himself would have said, had he lived to finish his undertaking, of rewriting and bringing up to date pages which needed revision and of adding new matter upon questions and events which arose or occurred subsequent to the author's death.

As to the new matter added, it is not always clear what represents the contribution of the author and what is the work of the editor. But we are told in the editor's preface that Professor Oppenheim himself revised the section (53), dealing with the legality of war, section 57*a*, relative to the threatened disappearance of the distinction between combatants and non-combatants, various sections concerning the rights and duties of neutrals, reprisals and the right of angary, and some of the sections relating to contraband, the seizure of enemy reservists, on neutral vessels, prize law, and other matters. The editor added

[1] *International Law*, by L. Oppenheim, formerly Whewell Professor of International Law in the University of Cambridge. Vol. II—"War and Neutrality." Third edition. Edited by Ronald F. Roxburgh. (Longmans, Green & Co., 1921.) Pp. v–xlv, 4–671. 36*s*. net.

some pages dealing with the League of Nations, upon which Professor Oppenheim had published a monograph, expanded the author's notes on aerial warfare into a new chapter, added new sections dealing with long distance blockades, and incorporated new matter on a great variety of subjects upon which the author had left no notes. The revision of the second volume, which deals with war and neutrality, proved to be a much larger undertaking than the revision of volume I, which covers the law of peace—this, because of the numerous changes and additions made necessary by the events of the World War. During this war, as is well known, not only nearly every old question of war law was raised, sometimes again and again, but many questions which were entirely new and often novel had to be interpreted and applied. A variety of new instruments and unprecedented methods were employed during this war for the first time. The submarine torpedo-boat and automatic mine, armed merchantmen, poisonous gases, the airship, wireless telegraphy and other new instrumentalities and agencies all played an important rôle. What is more, the war was carried on under conditions which were largely different from those under which all former wars were fought. Rules, therefore, which had been formulated to meet the old conditions proved inadequate or illogical. It is not surprising that they were interpreted so as to make them conform to the new conditions or were entirely disregarded. In respect to many questions which arose during the war there were no rules of international law at all or only very imperfect rules. Such was the case of aerial warfare, concerning which there was no law except article 25 of the Hague regulations which prohibits the bombardment of "undefended" places by aircraft—a rule of little practical value, since it lays down no test for distinguishing between "defended" and "undefended" places. In fact, it served as little or no restraint at all upon the conduct of belligerents. As to other matters, there was a divergence of opinion as to what the law required or permitted. The events of the war, therefore, abundantly demonstrated not only the ineffectiveness but indeed the utter inadequacy of the existing body of conventional and customary law for the regulation of the conduct of both belligerents and neutrals. Under these circumstances, the World War was of unprecedented significance in its effect upon international law. To have considered with any degree of adequacy all the questions of international law, new and old, to which the war gave rise, to have examined the conflicting interpretations and practices of belligerents and neutrals, and to have discussed the results upon international law, would have necessitated the rewriting of Oppenheim's original treatise, and its expansion into several volumes. This task lay beyond the purpose of the author and the editor. They limited themselves merely to the addition of such new matter and to such alterations as were necessary to bring the treatise up to date and to record the more important events and results in so far as they affected the development of international law. As it is, there are few pages on

which there are not references to the World War. On account of the limitations of space it necessarily happened that the new matter added often consists merely of citations to important cases and of references to other sources of information where the details may be found. There is a great abundance of matter of this kind, either interwoven in the text or inserted in copious footnotes. Under the circumstances, it is difficult to see how more could have been done or better done without going beyond the task set for the editor. One may regret that the author and the editor did not more frequently express their own opinions on the more important controverted questions raised in respect to the interpretation and application of the law. The views of the author, in particular, who was one of the acknowledged masters of international law, would have been interesting and instructive to students of international law. But, even admitting that it is within the rightful province of the jurist to evaluate and pass judgment, there were sufficient reasons why both the author and the editor generally refrained from expressing their own views on the points in controversy. As to Professor Oppenheim, the notes which he left were written from time to time as the events with which they dealt occurred, and were probably not always intended to represent the final form which he expected to give them. As to Mr. Roxburgh, he naturally did not consider that it properly fell within his province to express his own opinions in the work of another, of which he was merely the editor. And as to both, the limitations of space left little opportunity for more than a brief statement of the more important facts. Nevertheless, the author did occasionally express his own opinions. Thus he qualifies as an "absurdity" the opinion sometimes expressed that war and law are inconsistent and that the existence of war is the negation of law. He points out that the events of the late war, coupled with certain conditions of modern life, threaten to break down the time-honoured distinction between the armed forces and the civilian population, yet he does not admit that the assimilation can be carried to the point where it ought to be recognized as legitimate, for example, for an aviator to fly far beyond the theatre of war, and drop his deadly bombs upon peaceful civil populations. It may be remarked, in this connexion, that in his new chapter on aerial warfare he points out that the injury done to innocent non-combatants and private property by aerial raiders during the World War was out of all proportion to the military damage wrought, and he gives us his opinion that the limits within which aviators ought to be allowed to commit raids outside the theatre of military and naval operations should be regulated by international agreement. He speaks again and again of the "nefarious" submarine methods of the Germans and the shooting of Captain Fryatt is properly denounced as a plain case of judicial murder. Regarding the violation of fundamental rules of international law by belligerents, he ventures the suggestion that the League of Nations should intervene to prevent such acts. He even expressed the opinion that the duty of impartiality by which

neutrals are bound does not oblige them to remain inactive in the presence of a grave violation of international law by a belligerent. Regarding the injuries which neutrals inevitably suffer during wars of to-day, and in particular from reprisals by one belligerent against his adversary, he thinks they cannot justly complain if they are unable or make no effort to prevent the belligerent against whom the reprisal is directed from committing the acts for which the reprisal is resorted to by the other. He seems therefore to approve the decision of the Privy Council in the *Stigstad* and *Leonora* cases. He is in agreement with the position taken by the United States during the World War, that, as international law now stands, a neutral is not bound to prevent its nationals from supplying belligerents with arms and munitions, though he ventures the suggestion that, with a rising standard of public morality, a new rule forbidding such traffic may be introduced. The editor tells us that the author left a note indicating that he recognized the legality of the " long distance " blockade, but that apparently he had reached no conclusion in regard to the validity of the alleged blockade of neutral ports by the Allies. The editor in his revision of the chapter on contraband, adverting to the old distinction between absolute and conditional contraband, remarks that the World War has shaken its foundation. In the judgment of the reviewer there is no doubt as to this, and it might be added that the old rules governing the destination of the two classes of goods were shown to be illogical and based upon no sound principle. The action of the British Government in disregarding the distinction between absolute and conditional contraband, and applying the doctrine of ultimate destination to the transportation of both, in our judgment, was justified under the existing conditions, although the editor himself does not go to the length of expressly saying as much. Finally, in his discussion of the modern right of angary, as it was exercised in connexion with the requisitioning of Dutch ships in 1918, he aptly remarks that the World War clearly demonstrated that belligerents will not readily renounce the exercise of any right claimed by them unless it is absolutely clear that it does not exist. For this reason, it is of the highest importance that the rights of belligerents should be more precisely defined and embodied in an international convention, so that their legal power to interfere with the just rights of neutrals may be removed beyond the realm of controversy. Until means shall be found for preventing wars themselves, this task should occupy the chief place on the programme of the next Hague Conference—if there should ever be another one.

JAMES W. GARNER.

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THE BRITISH YEAR-BOOK OF INTERNATIONAL LAW.[1]

This, the third annual volume, will be welcomed by all interested in the study and development of international law, the more especially as with each year the volume, while maintaining its general high standard, tends to become more extensive in its scope and also more detailed and exhaustive in certain very valuable particulars, as, for instance, in its Summary of Events and Bibliography of the year. We are not sure, however, that the editors have been well advised in abandoning the original separate tabular List of International Agreements—a form which, if only on the score of convenience, has much to recommend it. The body of the volume contains eleven articles, remarkably uniform in their value and interest, on various important and practical topics of international law.

The opening contribution is an article on Contraband, by the late Sir Erle Richards. Following it is an appreciation by Lord Finlay of the work and personality of that distinguished jurist, whose premature death, so deeply deplored by all, was a severe blow to the science to which he had so whole-heartedly devoted his genius and attention. "It is deeply to be regretted," writes Lord Finlay, voicing universal opinion, "that he has left us no work embodying in more permanent form his conception of international law." In this article Richards emphasizes the great importance of the right to seize contraband, which "is, perhaps to some, an unexpected result of our war experience." And he takes the view that if any one of the proposed changes had become law before August 1914 the fortunes of war might well have been different. With this experience it is idle now to expect that Sea Powers will ever assent to the surrender of the right to interfere with traffic which directly assists the operations of their enemy. Two points, particularly, are considered in the article—the extension of the Lists of Contraband and Destination—and these are dealt with in certain general aspects, in the hope of facilitating, if only in some small degree, their future consideration.

As might be expected, the articles, as a rule, are suggested by and treated in the light of war experience. And perhaps it is in this fashion only—by special discussion of particular subjects in juridical periodicals and volumes such as this—that, for the present, the new foundations of international law can be laid. Those least associated with the war are, perhaps, "The Territoriality of Bays," by Sir Cecil Hurst, and "The History of Intervention," by Dr. P. H. Winfield. Of the others, may be mentioned "An International Criminal Court," by Lord Phillimore, "Blockade in Modern Conditions," by Mr. H. W. Malkin, "Submarines at the Washington Conference," by Mr. R. F. Roxburgh, and "The Barcelona Conference," by Mr. G. E. Toulmin.

[1] *The British Year-Book of International Law*, 1922–3. Third year of issue. (London: Henry Frowde and Hodder & Stoughton, 260 pp.) 16*s*. net.

In a learned and interesting article on "The International Status of the British Self-governing Dominions," Mr. Malcolm M. Lewis discusses the "sovereignty" of the self-governing constituents of our Empire. General Smuts's declaration that "the doctrine that the British Parliament is the sovereign power for the Empire no longer holds good" is regarded by Mr. Lewis as going too far. Rather, in the author's view, these dominions are "partners" in the Empire, pledged to pursue a common partnership policy. Mr. C. Ll. Bullock's article on "Angary" is of special interest and value. A perusal of this very exhaustive history and exposition of the topic is likely to correct the Englishman's tendency to conceive Requisition by the Crown too exclusively as a feudal incident or a common law exercise of the prerogative. Noticing references in this article to T. W. Fulton's *The Sovereignty of the Seas*, we are led to wonder how it is that this very valuable work is to be seen so infrequently in the hands of international lawyers. Dr. W. R. Bisschop's article on "Immunity of States in Maritime Law" is also one of great practical interest. The learned author regards it as highly desirable, in the interest of the democratic development of international law, that the English doctrine of the immunity of the State should be abandoned and the continental rule modified to such an extent that immunity from jurisdiction should cease, if not altogether, in any event as far as maritime law is concerned. This end could be attained either by international agreement, as attempted by the *Institut* in 1891, or with the aid of the Permanent Court of International Justice at the Hague. In "Enemy Ships in Port at the Outbreak of War," Professor Pearce Higgins, after dealing shortly with the position of such ships apart from the Hague Convention, and then considering the question of the Convention as regards other belligerents in the late war, proceeds to an interesting discussion of the judgment of the Privy Council in the cases of *The Blonde*, *Prosper*, and *Hercules*.

In this country, where there is so little periodical literature devoted to international law, the Year-book undoubtedly supplies an imperative need, and so far is supplying it well.

W. S. M. K.

THE THIRTIETH CONFERENCE OF THE INTERNATIONAL LAW ASSOCIATION.[1]

One volume has hitherto been sufficient for the report of a conference of this Association. On this occasion, however, the report requires two quite bulky volumes. The reason for this is to be found in the work of the Maritime Law Committee, the proceedings of which occupy exclusively the second volume. Indeed, that work immediately made the conference historic, for, guided if not controlled, by its diplomatic

[1] *The International Law Association: Report of the Thirtieth Conference held at the Peace Palace, The Hague*, 1921. (London: Sweet & Maxwell.) 2 vols

chairman, Sir Henry Duke, the committee succeeded, after a controversy and negotiation of some forty years' standing, in harmonizing the conflicting and diverse interests of shipowners, shippers, bankers and underwriters, and settling the already world-famous Hague Rules of 1921, which define the risks to be assumed by sea carriers under a bill of lading. In adopting these Rules, the Association hopes that it has provided a most useful example in the voluntary settlement of a question of universal trade by international co-operation and mutual consent. It is in this way that very practical and important steps are taken towards the ideal of international unity and peace.

First place must, of course, be given on this occasion to the work of the Maritime Law Committee. But the Association has more than twenty other committees at work, and merely to name but a few—International Arbitration, Aerial Law, Copyright, Chemical Warfare and Nationality and Naturalization—is quite sufficient to indicate the vast scope and the immense importance of the Association's activities. And a glance at the special topics which engaged the attention of the Conference is further evidence of the great influence of the Association for international right. In the region of what might be called high politics there are juridical problems in relation to the League of Nations, prisoners of war and their treatment, combatants and non-combatants, national minorities and the future laws of war. And to descend to the more material, in the sense that these matters touch so closely the every-day life in times of peace, a number of subjects in Private International Law were dealt with by the Conference. Of these may be mentioned Foreign Judgments, Domicile and Bankruptcy Jurisdiction, Multiple Taxation, the Sale of Goods and Contractual Capacity.

The Conference—it appears from the Report—was royally entertained. A special deputation was received by the Queen. And the great Municipalities—the Hague, Amsterdam, Rotterdam—and the great commercial corporations—railway and petroleum especially—spared no effort or expense to recreate the delegates in the intervals of their toil. But, apart from the records of formal business and some slight allusion to the inevitable lighter side of the proceedings, these two volumes would make a valuable addition to the library of the student of international law.

W. S. M. K.

AN UNRIVALLED TEXTBOOK.[1]

It is a melancholy task for the British international lawyer to review a work on international law published in the United States. Comparisons are suggested to his mind which are by no means favourable to this

[1] *International Law, chiefly as interpreted and applied by the United States.* By W. Cheney Hyde. (Boston: Little, Brown & Co., 1922.) 2 vols. Price $25 net.

country. In America international law is regarded with a respect and a seriousness which has resulted in the undoubted fact that American publications on the subject are, in weight and accuracy of matter, in method of arrangement, and in attractiveness of presentation and appearance, without rivals throughout the world. The present work is no exception to, indeed is a conspicuous instance of, the rule.

While it is undeniably true that international law is, in so far as it consists in the agreement or the universal practice of States, something objective and ascertainable, yet there are considerable tracts of what is commonly regarded as law in which so much variety of action prevails, that it is difficult if not impossible to say that there is a rule of international law upon the subject. Take, for example, the practice of States (so-called international law) regarding jurisdiction over acts committed on board merchant-vessel A in the territorial waters of State B; or the conflicting practice of States, in certain branches of the law of prize, such as continuous voyage or blockade. In such cases it is true to speak of the British or the American view of international law. The author of this book has written a treatise, of great learning, accuracy, and scientific power, upon the American view of what are the rules of international law, paying, of course, special regard to the special part which has from time to time been played by the United States in international controversies. Almost no praise is too high for this admirable work, which will take its place as a classic among treatises upon international law.

In reading such a work as this, the mind naturally turns to such distinctively American matters as the Monroe doctrine. It is the author's view that this doctrine is now part of international law, having become so by virtue of a tacit acquiescence in it by the other States. This is scarcely an acceptable conclusion. The Monroe doctrine is an assertion of political interest, an axiom of American diplomacy, as announced in authoritative fashion to the world. It has nothing to do with law. It is hard to see how the purely negative attitude of other States can have the effect supposed by the author of transmuting what is in essence a purely political question into a rule of law. Only in one way, as it would appear to the writer of this note, could such a change be effected, and that is if the conduct of the other States and their attitude towards the Monroe doctrine is such as to amount in law to an agreement to refrain from exercising, in relation to the American continent, other than the United States, certain rights which in law are indubitable. Such an agreement hardly is to be inferred from the course of dealing with the Monroe doctrine which has hitherto prevailed.

In regard to the Allied "blockade" of neutral shipping, before the entry of the United States into the late war, the author is temperate and judicial. He declines (and makes out a good case in support of his view) to accept the facile assumption that the Allied blockade was no more stringent than the action of the Northern States during the American

Civil War. He deals with all the decisions on the point by the British Prize Court, and the Judicial Committee, and correspondingly quotes from or refers to the diplomatic interchanges between this country and the United States. This part of the work, like every other, is a miracle of exhaustive comprehensiveness of treatment, of rich learning, ripe and temperate judgment, and orderly presentation. The world of international law is the richer for this work, which is the most noteworthy and memorable of modern times.

CYRIL M. PICCIOTTO.

PUBLIC AND PRIVATE INTERNATIONAL LAW.[1]

THE present year has been marked by two events of great importance to those interested in the conflict of laws in that the great treatises of Dicey and of Westlake have both been reissued in new editions. Mr. Bentwich has done his pious work, as might have been expected, supremely well. Recent extensions or modifications of the law have been duly incorporated and worked into the original text with skill and the minimum of displacement of the author's original work. The most recent decisions on such questions as the date upon which damages in a foreign currency are convertible into sterling, the defence of diplomatic privilege, the effect of the war upon actions on negotiable instruments against acceptors or drawers, and, indeed, on all the very many topics which have been specially brought into prominence by the war and reviewed in the light of modern conditions, are all mentioned and admirably dealt with in the text. Mr. Bentwich deserves the thanks of all that increasing number of persons concerned in the exposition of legal principles or with their application in actual practice, who are called upon to deal with the conflict of laws.

Sir Erskine Holland's *Letters on War and Neutrality* are now brought up to date and contain his views on various questions of international law raised by the war and the consequent settlement. His judgments lack nothing in vigour.

The seventh volume of the *Grotius Society's Transactions* is chiefly noteworthy for a remarkable paper by Mr. W. Latey, in which he deals, with great learning and reasoning power, with the law of the air; and for another paper, equally remarkable (though not perhaps in quite the same sense) by Dr. Bellot, in which he, with apparent seriousness, propounds the thesis that a merchant vessel possesses, under international law, the right to *attack* a warship of the enemy.

C. M. P.

[1] *Westlake's Private International Law.* Sixth edition, by N. Bentwich. (London: Sweet & Maxwell, Ltd., 1922.)

Letters on War and Neutrality. By Sir Thomas Erskine Holland. (London: Longmans, Green & Co., 1921.)

Transactions of the Grotius Society, vol. vii. (London: Sweet & Maxwell, Ltd.)

THE EQUALITY OF STATES IN INTERNATIONAL LAW.[1]

THIS work was originally written as a doctor's thesis. It presents the principle of the equality of States as it is propounded in the theory of international law, and as it is affected by common usage. Within the latter consideration, Dr. Dickinson takes account of the organic constitution of the State and of conditions and aspects of external relationship that limit international legal capacity.

In that part of the book which shows probably most knowledge and acumen, although it is the least useful in practice, the position taken is, that in historical origins the idea of State equality did not come into the law of nations through the doctrine of sovereignty (on which Bodin is here imperfectly expounded), but came through that "important trilogy of ideas which had dominated speculation since the age of antiquity"—namely, the theories of natural law, natural equality and the state of nature. The author's presentation of these theories is clear and well-sustained, both in themselves and for their bearing upon his subject. He analyses the principle of State equality in the writings of modern publicists and in documentary sources of the past century. Further, he adds considerably to the value of his book by giving not only a well-prepared bibliography, but also precise references in his footnotes, and some pertinent extracts. He has not resisted the temptation to add a supplementary chapter on the Peace of Paris, from which he draws the lesson that it tends to limit the political equality of States.

Students of the history of political thought are familiar, or should be, with the recurring confusion between "right" and "power." The distinction between these might with advantage have been kept more clearly and persistently before the author in his exposition of the views of authorities. We think also that gain would have resulted from attention to the reason in the mind of a writer like W. E. Hall for almost shunning the use of the term "equality" and preferring the word "independence," carefully and helpfully defined. States, sovereign and independent, are among themselves on a footing of juridical equality. The rest in practice, policy and power; and it is in this sphere that we should have welcomed a more substantial contribution to learning and political interpretation by Dr. Dickinson. Not least for his own manner of treating his subject, it is necessary to discover the bearings of the actual "State System" of Europe at the time, for example, of the Peace of Westphalia (too slenderly touched by the author), and almost throughout the eighteenth century, with its "testament of the old Europe." It is necessary to see how dominant or stereotyped conceptions were

[1] *The Equality of States in International Law* (Harvard Studies in Jurisprudence, vol. iii). By Edwin De Witt Dickinson, Ph.D., J.D., Professor of Law in the University of Michigan. (Cambridge: Harvard University Press, 1920. Pp. xiii + 424. Price 17*s.* net.)

actually reasoned from and applied by statesmen and State representatives in the conduct of affairs. History and the law must be brought into more intimate relationship, as Henry Wheaton would have desired. We need the combination of historian and of legal interpreter in the treatment of these problems. But in the historical illustrations he gives from the last century, Professor Dickinson proceeds with surer step than for earlier times, and, writing before the end of the World War, he makes suggestive comments upon the way in which the legal capacity of a State among States may be restricted by its organic constitution, and he regards as fundamental and as inadequately recognized the distinction between equality of legal capacity and equality in international organization. There is much in the author's realistic standpoint that should commend this work to students and the politically-minded.

D. P. H.

LAWS AND REGULATIONS REGARDING LEAD POISONING IN VARIOUS COUNTRIES.[1]

Of all forms of industrial poisoning, that due to lead is one of the most important, for while it may not destroy life immediately, like carbon monoxide or sulphuretted hydrogen, it is yet capable in the acute form of causing early death, and in the chronic forms it is a cause of considerable suffering and physical disability. In addition, lead is largely used in so many industries that persons are unknowingly brought within the range of its malign influence. In this brochure, Mr. Gilbert Stone has carefully gathered together the laws and regulations which have been drawn up in various countries to prevent plumbism. As an indication of the prevalence of lead poisoning, and the importance of the subject, mention need only be made of the fact that the prevention of the malady by the interdiction of lead in paints was one of the most keenly debated questions at the International Labour Conference (League of Nations) in Geneva last November.

Lead mining, formerly extensively carried out in the North of England and Derbyshire, is to-day a decaying industry owing to the richness in silver of foreign ores. Most of the lead used in this country comes from the United States, Germany, Mexico, and Australia. There are two kinds of lead ore—one known as *galena* (sulphide) and the other *cerussite* (carbonate). In Great Britain the ore mined is galena. As the lead in this form is extremely insoluble, the miner in his occupation runs no risk of suffering from plumbism. The same remark, however, does not apply to men who mine the cerussite ore, for this, being a carbonate, is soluble in the gastric juice. One of the main dangers incidental to the mining of galena is inhalation of the hard particles of dust. This sets

[1] By Gilbert Stone, sometime Scholar of Caius College, Cambridge, Tancred Student of Lincoln's Inn, of the North-Eastern Circuit, Barrister-at-Law, B.A., LL.D. Pp. 250. (Published by H.M. Stationery Office, Kingsway, London. Price 5*s*. net.)

up a form of phthisis, non-tuberculous in the early stages, and known as silicosis. The introduction of water spraying in mines and attention to ventilation have reduced the frequency of this disease among lead miners.

The danger of plumbism arises with the smelting of lead, and it is renewed in the manufacture of white and red lead, also in the manipulation of lead compounds. It is pleasing to know that as regards regulations for lead works Great Britain was an early pioneer in the movement. She has maintained this recognized position. Although British regulations have in the main been adopted by most countries, some of these were really anticipated by France.

Dust and the fumes evolved from lead are the chief causes of plumbism. To prevent illness among the men exposed to these the dust and fumes must be reduced to a minimum. This can to some extent be achieved by the use of water-spraying and by exhaust draughts. The necessity of personal cleanliness on the part of the workpeople, the need for wearing overalls, also periodical medical examination, so that the malady may be detected early and the individual given other work, have proved of the greatest service. To carry these out, ample facilities for washing must be provided, in order that the persons employed shall wash before eating and before leaving the factory.

As regards white lead, one of the most encouraging results of the regulations introduced by Great Britain is seen in the marked diminution in the number of cases of lead poisoning amongst employés.

The transformation of what was formerly regarded as a dangerous industry into one of a comparatively safe nature is a triumph of industrial legislation of which we may well be proud. The reduction in the number of cases of lead poisoning in this industry in this country is seen in the following table :

1900–1904	183 cases
1905–1909	76 ,,
1910–1914	31 ,,
1915–1919	17 ,,

While the introduction of means for the removal of dust, insistence upon cleanliness and periodical medical examination have been of the greatest service, one of the most important recommendations of the Departmental Committee of the Home Office on Lead Poisoning was the abolition of female labour in those processes of white lead manufacture known to be specially dangerous. Since this recommendation has been given effect to, the white lead industry has been shorn of some of its perils.

In a few of the white lead factories in France female labour prior to the publication of the British Home Office report had not been employed. Germany adopted the British regulation regarding female labour, with results as satisfactory to herself as those which have taken place in Great Britain. Belgian regulations are good and are effective.

The Regulations *re* the use of lead paints are much the same in all countries.

In 1913 Great Britain made elaborate Regulations regarding the use of lead in the manufacture and decoration of pottery and majolica ware. As an illustration of the improvement in the health of workers secured by Regulations, it is interesting to note that in 1896, in the manufacture of pottery and earthenware, there occurred 432 cases of plumbism, and that after the introduction of a series of Regulations the following were the number of cases:

In 1900	200
1905	84
1909	58
1915–1919 an average of .	19 per year.

In the manufacture of electric accumulators there have been many cases of plumbism due to the employment of red lead, but, as a consequence of adherence to the Regulations laid down for lead generally, there has been improvement.

Compensation is now awarded to persons who have contracted lead poisoning when following their occupation. In this, Great Britain led the way. Plumbism is not yet scheduled as an industrial disease in most of the States of the United States of America, but compensation is frequently awarded by judicial decision on the interpretation of the word "injury." Western European countries have followed British legislation in regard to compensation for lead poisoning.

The greater part of Mr. Stone's monograph is given to the texts of the laws and regulations in force in various countries. This is an extremely useful addition, since in it is gathered the Acts passed by respective legislatures. There is also an excellent index. Mr. Stone has published a book which ought to be helpful to all who are interested in lead manufacture, in the dangers incidental thereto, and how, industrially, these may be averted.

THOMAS OLIVER.

A DIGEST OF ENGLISH CIVIL LAW.[1]

"THIS work was originally published in eleven separate parts, the preparation and publication of which was spread over a good many years. During this time Jenks's *Digest of English Civil Law* became well known, and acquired a very considerable reputation as the leading work

[1] *A Digest of English Civil Law.* By Edward Jenks, M.A., D.C.L., Principal and Director of Legal Studies of the Law Society. Editor, W. M. Geldart, Vinerian Professor of English Law, Oxford, W. S. Holdsworth, Reader in English Law, Oxford, R. W. Lee, Professor of Roman-Dutch Law, Oxford, J. C. Miles, Fellow and Tutor of Merton College, Oxford, Barrister-at-Law. (Second Consolidated Edition, brought completely up-to-date in two large volumes (pp. ccxxxix + 1422 and Index). London: Butterworth & Co.)

on the Civil Law of England, *and its utility has been acknowledged almost in every quarter of the world. . . .*" (Notice of the Publisher.)

"As a basis, the authors have followed what is now the generally accepted plan of the European Civil Codes; for such a basis *obviously facilitates the use of the work by Continental readers, and will, it is hoped, do something to further the important study of Comparative Jurisprudence.*" (Preface to the consolidated edition, by the editor, p. iv.)

A l'appui des deux citations qui précèdent, l'auteur du présent compte-rendu est à même d'apporter l'affirmation de son propre témoignage, appuyé sur une expérience qui dure depuis plusieurs années.

Chargé, depuis l'année 1917, de l'enseignement de la législation civile comparée à la Faculté de Droit de l'Université de Paris, j'ai adopté immédiatement le *Digest* comme *textbook* de mes explications concernant le droit anglais. Je n'ai eu qu'à m'en féliciter, et les étudiants qui ont suivi mes cours et conférences m'ont tous exprimé leur satisfaction à l'égard de cet ouvrage. Ce sentiment est également partagé par ceux de mes Collègues qui ont eu à l'utiliser pour leurs travaux.

La raison première de ce succès tient incontestablement à la forme dans laquelle le *Digest* a été conçu. Sans doute il serait erroné de croire que toutes les matières du droit, sur le Continent, ont fait l'objet d'une Codification (exemple : en France une grande partie du droit public, *i.e.* le droit administratif, n'est pas codifié, et il en est de même en Italie, en Allemagne, etc.). Toutefois il est certain que, depuis cent ans, l'habitude d'esprit des juristes européens s'est pliée à la discipline de textes codifiés. Le *Digest*, qui présente pour la première fois sous un aspect de ce genre les éléments du droit anglais portant sur les Personnes (*natural and artificial*), les Choses, les Actes juridiques, les Obligations (*Contracts, quasi-Contracts and Torts*), la Propriété, la Famille et les Successions, devait nécessairement conquérir le suffrage des *lawyers* du Continent.

Mais il est utile de signaler une autre cause du succès du *Digest* parmi nous : c'est qu'il est le premier ouvrage qui nous présente *d'ensemble*, pour le droit anglais, les matières énumérées ci-dessus.

La littérature juridique anglaise possède, il est vrai, de très substantielles et réputées monographies : *on Torts, on Contracts, on Property* (*real or personal*), *on Domestic Relations*, etc. D'autre part, elle s'enorgueillit, à juste titre, du plus bel ouvrage général qui ait été conçu et écrit depuis les Romains, je veux dire les *Commentaries on the Laws of England*, de Blackstone, si heureusement tenus à jour par ses successeurs, et dont le dernier remaniement (*17th edition*) par notre savant collégue et ami le Dr. Edward Jenks, en concordance avec le *Digest*, va nous rendre les plus grands services. Néanmoins, pour le juriste du Continent désireux d'étudier *d'ensemble*, et *exclusivement*, les matières énumérées ci-dessus, les monographies avaient le défaut de trop fragmenter le droit civil, et les *Commentaries* celui de s'étendre bien au delà.

Le Digest est donc venu à propos pour combler, à nos yeux, ce qui constituait une lacune dans la littérature juridique anglaise. Il ne faut pas perdre de vue cependant qu'une autre lacune subsiste encore. Il n'existe, à notre connaissance du moins, aucun *Manuel* général, en un, deux ou trois volumes, contenant les matières du droit civil anglais, sur le modèle des livres analogues existant sur le Continent (exemples : en France, le *Traité élémentaire de droit civil français* de Planiol, 3 vol., ou le *Cours élémentaire de droit civil français* de Colin et Capitant, 3 vol. ; en Allemagne, le *Lehrbuch des deutschen bürgerlischen Rechts*, de Cosack, 2 vol.). N'est il pas permis d'espérer que les savants auteurs du *Digest*, complétant ainsi leur œuvre, doteront la science anglaise de cet ouvrage qui lui manque encore ? c'est le voeu que je formule ici pour terminer. Aucune publication ne serait plus utile pour seconder les efforts de ceux qui ont pris pour tâche de répandre sur le Continent les notions si originales et si passionnément intéressantes de la vieille *Common Law* d'Angleterre.

HENRI L. LEVY-ULLMANN.

DOMINION HOME RULE IN PRACTICE.[1]

FEW people in this country outside the Colonial Office know much about the problems of government in the Dominions, or the problems involved in the continuance of the sovereignty of the Crown. The man in the street believes that they manage their own affairs under Parliaments constituted on the British model, and that the only bond with the mother-country is the monarchy. But in fact democracy has already made considerable divergencies of constitutional forms and methods in the four great Dominions, and, though complete internal autonomy may be attained by the severance of the Privy Council link, there remain unsettled many questions as to the share and responsibility of the Dominions in matters of foreign policy, war and imperial defence. A comparative view of the constitutions of the Dominions has long been wanted, and it could not be better presented than it is by Professor Keith in this little booklet, which, though of little more than sixty pages, is an admirable summary of Dominion politics, illustrated by comparisons of the different handling of problems by the several democracies.

There are notable differences in the constitutions of the Dominions : thus, in Canada direct connexion between the Imperial Government and the provinces is shut off and the Lieutenant-Governors are appointed locally, while in Australia the States retain direct communication with Downing Street, and their Governors are still appointed by the Crown. In Canada all powers not expressly given to the provinces are vested in the Dominion, while in Australia the contrary principle was adopted. As regards this allocation of powers, the Australian States are in a less

[1] *Dominion Home Rule in Practice* By A. Berriedale Keith. Pp. 63. (London : Humphrey Milford.)

secure position than the Canadian provinces, because the whole constitution of the Commonwealth is liable to alteration consequent on a popular vote, whereas that of Canada cannot be altered save with the consent of the Imperial Parliament.

The development of Cabinet Government under Labour conditions in Australia exhibits some novel features upon which our electorate at home would do well to ponder. The Prime Minister is not permitted to select his own Cabinet; his colleagues are assigned to him by the Caucus, who also dictate their policy to the Cabinet. The result, as Professor Keith observes, "is deleterious to the prestige and effectiveness of Parliament: members of the party are bound to vote in accordance with decisions which may be contrary to their own views," and Ministers are often unable to agree to amendments proposed by the Opposition which they themselves may approve; thus "the true spirit of parliamentary co-operation is rendered impossible." Under these conditions, indeed, Parliament ceases to be a deliberative assembly.

Another chapter of Professor Keith's little treatise traces the growth of Dominion participation in foreign affairs. First came recognition of their rights in relation to commercial treaties affecting themselves; subsequently their claim to be consulted on the imperial proposals to be laid before Hague Conferences has been conceded; and, lastly, the four Dominions and India are severally accorded votes in the Assembly of the League of Nations. Canada has now an accredited diplomatic representative at Washington, who acts with but subordinate to the British Ambassador. A similar claim by Australia and South Africa has been made but not yet admitted. The graver question of consultation between the Dominions and the Imperial Government on general foreign policy is still unsettled.

A. G.

THE LEGAL STATUS OF WOMEN IN ALBERTA.

As its name suggests, the main interest of this pamphlet [1] is for the woman social worker, and it should, in its second edition brought up to date, be of considerable value to all those working for and amongst women. But it also provides, though in a necessarily cursory form, useful material for a comparison of the position of women in a Canadian province with that of women in England. This comparison is the more instructive because of the manner in which Alberta has acquired her present law—through a progressive modification of English law by the passing of Dominion laws, by the Ordinances of the North-West Territories and by the Acts of the Legislature of Alberta, these last passed subsequent to 1906, when Alberta received status as a Province.

[1] *The Legal Status of Women in Alberta.* Second Edition. Compiled by Henrietta Muir Edwards. Issued by and under the authority of the Attorney-General, 1921.

Mrs. Edwards, the compiler of this pamphlet, praises her province as being foremost in "recognizing through its legislation the value to the State of women's brain and capacity for service," and she instances in support not only the appointment of individual women to official posts of honour and responsibility but also the general trend of provincial legislation in favour of women both as citizens and mothers.

It is not surprising, therefore, that the rights and duties arising from the marriage relation occupy a considerable part of the pamphlet, and we note in particular the following points:

(*a*) Though by provincial law divorce is obtainable only on the same grounds as in England, by a Dominion Statute (part of the law of Alberta), it can also be obtained by means of a special Act for the sole cause of adultery.

(*b*) The passing of the Deceased Wife's Sister Act in 1882, some twenty-five years prior to the passing of the similar Act in England, has not yet been followed (though an unsuccessful attempt was made in 1920) by the analogous Act recognizing marriage with a deceased husband's brother as legal, such as became law here in 1921.

As to property rights, married women in Alberta can certainly claim to be "in advance" of their English sisters in two respects: tenancy by the curtesy does not exist (it was abolished in the Territories in 1886), whilst by an Act of 1910 (Married Woman's Relief Act, Statutes of Alberta, 1910, cap. 18), in certain cases a widow, on application to the Court, may be granted an allowance out of the estate of her husband notwithstanding that that estate has been fully disposed of by will. Whether this is in fact an "advance" may depend upon whether it is looked at from the point of view of women's organizations, or regarded as a limitation upon the somewhat hardly won right of freedom of disposition by will.

This aspect of the situation leads one naturally to speak of some of the other innovations to be found under Alberta's legal system, and it is interesting to find that much of what is at present prominent in political programmes in this country (again, especially, in those of women's organizations) is already in force in Alberta. As instances we mention the rights of the mother as guardian of her children, the recognition of legal adoption, legitimation by subsequent marriage and mothers' allowances.

As citizens, women have been granted the vote (and this equally with men at the age of twenty-one), but they have not had conferred upon them the corresponding duty of jury service, and a marked exception to their equality of citizenship is found in that "a married woman or widow has the same right to acquire hold and dispose of property as a man except that she is debarred from homesteading or pre-empting unless she is the sole head of a family."

Other points of divergence from English law which may be mentioned include the recognition of an action in tort by a woman who has been seduced, and the severity of the maximum sentences in certain

classes of sexual offences. In general principles the Criminal Code follows English law with regard to these latter—with some few exceptions, of which two notable examples are the abolition of the defence of reasonable cause to believe and the drastic provisions of the Criminal Code and the Acts of 1918 and 1919 relating to venereal disease.

Though Mrs. Edwards expressly repudiates any claims for this pamphlet beyond those of an elementary introduction to the subject of which she treats in so able a manner, it is hoped it will not be thought out of place or unappreciative to say that its great usefulness—of which we have no doubt—could be increased if it were supplied with an index, for which surely no one will claim any printed work to be too small.

MONICA M. GEIKIE COBB.

STATUTES AND THEIR INTERPRETATION.[1]

THE Cambridge Law School is to be congratulated upon the Studies in Legal History produced by the University Press under the learned and indefatigable editorship of Professor Hazeltine. The second volume in the series is a valuable examination by Mr. T. F. T. Plucknett of English Statutes and their interpretation by common lawyers during the reigns of the first three Edwards. The author has scoured the Year-books for evidence, and he prints some select cases in an Appendix.

The half-century which begins with Edward I was a period of rather radical law reform. Judges had much *novel ley* to administer. The time is over-early for detecting the beginnings of our modern system of interpretation. There are hints that lawyers as yet do not always see why an older statute should not prevail when a newer statute conflicts with it. In spite of a glimpse of something like our *ejusdem generis* rule, and in spite of the apparent acceptance by 1350 of the principle of strict interpretation, the common lawyers were far behind the canonists in evolving set rules for interpreting statutes. Still, it is well worth while to watch strong judges like Bereford and Staunton and Hengham and Hilary doing their best under difficult conditions.

Mr. Plucknett shows us three stages of interpretation. At first the judges, being also the draftsmen and legislators, are in the best position to say what a statute means. We can hear Hengham C.J. stopping counsel's arguments with "We know the statute better than you, for we made it"—a notable example of *contemporanea expositio*. Next comes the transitional stage of oral tradition, as when Shareshulle J. remarks reminiscently, "I once took that line before Scrope J., having nothing better to say: on adjournment we came before Herle J., and he said the strongest argument he knew against us was that Hengham, who made the statute, interpreted it the other way." Finally oral tradition fails,

[1] *Statutes and Their Interpretation in the Fourteenth Century.* By Theodore F. T. Plucknett, with a General Preface by Prof. H. D. Hazeltine. (Cambridge University Press: pp. xliv and 200. 20*s*. net.)

and the intention of the Legislature must be inferred from the words of the statute. By this time judges get less help from the Legislature and the Executive. They stand not quite so close to the King, and they can begin to treat the prerogative with less deference.

Early Edwardian judges and pleaders must have suffered through the comparative inaccessibility of the text of statutes. Tradition is believed to identify certain extant copies as those used by the early judges, but they seem not to have been readily available. When a statute is actually brought into Court and a judge looks at it, the reporter thinks the incident worth recording. Judicial mistakes about statutes are not uncommon. A statute can be cited in apparent ignorance of its repeal. Modern Georgians, with their more elaborate equipment of printed Acts, indices, and textbooks, can sympathize with early Edwardians over such oversights. Only a few months ago a temporary Act of 1919 was judicially supposed to have expired, when in fact it was still in force. " The attention of the Court," explained the Lord Chief Justice in subsequent proceedings, " was not drawn to the Expiring Laws (Continuance) Act." So great a task do we attempt who are all supposed to know the law.

On " exceptions out of the statute," on the extension and limitation of statutes, on retrospective effect, and on other problems familiar in outline to readers of the historical survey in Sir Courtenay Ilbert's *Legislative Methods and Forms*, Mr. Plucknett makes apt and useful comment. One chapter is devoted to errors of translation discovered in the Record Commissioners' edition of the *Statutes of the Realm*. To his list of errors might be added the neat example from the classification of trees in the Customs and Assize of the Forest (*Stat. of the Realm*, i, p. 243), where *arabilis* is most uncomfortably rendered " arable " instead of " maple-tree " (French *érable*). This detail is noted by Mr. Turner in the glossary to his *Select Pleas of the Forest*. On the question of the dating of undated statutes it may be worth mentioning that two papers on " Some Thirteenth Century Statutes," by the same learned hand, appeared in the *Law Magazine* nearly thirty years ago and tentatively attacked topics now more fully examined in the volume under review.

The labours of the Selden Society on our Year-books are the better justified when scholars like Mr. Plucknett show the use which can be made of such material. It is to be hoped that other periods of our legislation may be subjected to the same intensive treatment. It would be ungrateful to conclude with a remark which might be construed as belittling the worth of this valuable series of Cambridge monographs, but the student who has not many pennies in his purse will look forward to a time when the stream of learning flows at less cost. Man cannot live by public libraries alone. If prices mean prohibition, thirsty students must sometimes go dry.

C. T. C.

The following books have also been received:

The Holy Alliance: The European Background of the Monroe Doctrine, by W. F. Cresson, Ph.D., Carnegie Endowment for International Peace. Humphrey Milford, Oxford University Press, 1922. 147 pp.

War and Armament Loans of Japan, by Ushisaburo Kobayashi, D.C.L. Carnegie Endowment for International Peace. Humphrey Milford, Oxford University Press, 1922. xv + 221 pp.

Colonial Tariff Policies. United States Tariff Commission, Washington, 1922. vi + 869 pp.

The Organization of a Britannic Partnership, by R. A. Eastwood, LL.D. London: Longmans, Green & Co., 1922. xi + 148 pp. (*7s. 6d.* net.)

The League of Nations, by the Rt. Hon. Sir Frederick Pollock, Bt., K.C. Second edition. London: Stevens & Sons, Ltd., 1922. xvi + 266 pp. (*16s.* net.)

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